
CHAPTER 3. ELIGIBILITY FOR ASSISTANCE AND OCCUPANCY

3-1 Introduction

- A. This chapter discusses the requirements and procedures for determining whether applicant families may participate in HUD-subsidized multifamily housing programs. Described in this chapter are steps an owner must follow to determine whether a family is eligible to receive assistance in a HUD-subsidized multifamily property and eligible to live in a specific property and unit. These activities are described in a sequential order; however, owners may deviate from this sequence based on project circumstances as long as they determine an applicant's eligibility before admitting the family to the property.
1. While this chapter provides the rules for eligibility, the processes for developing and maintaining a waiting list and correctly selecting an applicant for the next available unit are addressed in Chapter 4, Sections 3 and 4. Determining and verifying annual income, which is an eligibility requirement, is addressed in Chapter 5.
 2. Subsequent chapters in the handbook address activities that occur once an owner determines that a family is eligible for tenancy, such as leasing, recertification, terminations, billing, and reporting.
- B. This chapter is divided into three sections, each of which identifies the variations in eligibility requirements based upon type of subsidy. The three sections are as follows:
- **Section 1: Program Eligibility**, which describes the criteria by which the owner must determine whether a family is eligible to receive assistance;
 - **Section 2: Project Eligibility**, which describes the criteria by which the owner must determine whether a family is eligible to reside in a specific property (e.g., project eligibility limited to a specific population, unit size, and occupancy standards); and
 - **Section 3: Verification of Eligibility Factors**, which describes how the owner should collect information to document family composition, disability status, social security numbers, and other factors affecting eligibility for assistance.

3-2 Key Terms

- A. There are a number of technical terms used in this chapter that have very specific definitions established by federal statute or regulations or by HUD. These terms are listed in Figure 3-1 and their definitions can be found in the Glossary to this handbook. It is important to be familiar with these definitions when reading this chapter.
- B. The terms “disability” and “persons with disabilities” are used in two contexts – for civil rights protections, and for program eligibility purposes. Each use has specific definitions.
1. When used in context of protection from discrimination or improving the accessibility of housing, the civil rights-related definitions apply.
 2. When used in the context of eligibility under multifamily subsidized housing programs, the program eligibility definitions apply.

NOTE: See the Glossary for specific definitions and paragraph 2-23 for an explanation of this difference.

Figure 3-1: Key Terms

<ul style="list-style-type: none"> • Applicant • Assistance animals • Chronically mentally ill • Citizen • Developmentally disabled • Disabled family • Disabled household • Displaced family • Elderly family • Elderly person • Eligible noncitizen • Evidence of citizenship or eligible status • Family • Income limit • * Independent student * 	<ul style="list-style-type: none"> • Live-in aide • Mixed family • National • Near-elderly family • Noncitizen • Nonelderly disabled family • PAC (Project Assistance Contract) • Person with disabilities • Physical disability • PRAC (Project Rental Assistance Contract) • Prorated assistance • RAP (Rental Assistance Payment) • Remaining member of a tenant family • Rent Supplement • Section 8
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Section 1: Program Eligibility

3-3 Key Regulations

This paragraph identifies key regulatory citations pertaining to Section 1: Program Eligibility. The citations and their titles (or topics) are listed below.

A. Income Limits

- 24 CFR 5.609, and 5.653 (Annual income and income eligibility)

B. Disclosure of Social Security Numbers

- 24 CFR 5.216 Disclosure and Verification of Social Security and Employer Identification Numbers

C. Consent Forms

- 24 CFR 5.230, 5.232 (Consent by applicants and assisted participants and penalties for failing to sign consent forms)

D. Restrictions on Assistance to Noncitizens

- 24 CFR part 5, subpart E – Restrictions on Assistance to Noncitizens

E. **Restrictions on Eligibility of Students for Section 8 Assistance

- 24 CFR 5.612 Restrictions on assistance to students enrolled at an institution of higher education.**

3-4 Eligibility Determinations – General

Owners are required to determine whether applicants are eligible to occupy the subsidized property and receive housing assistance. Eligibility is determined by federal statute and HUD regulation. For HUD programs, eligibility is only determined at move-in or at initial certification except as discussed in paragraphs **3-13, Determining Eligibility of College Students for Assistance** and paragraphs **3-16, Determining the Eligibility of a Remaining Member of a Tenant Family**. HUD's general eligibility requirements are found in HUD's regulations at 24 CFR, part 5.

3-5 Key Program Eligibility Requirements

Applicants and tenants must meet the following requirements to be eligible for occupancy and housing assistance. Subsequent paragraphs provide more detailed information about income limits, social security numbers, and consent forms.

- A. The family's annual income must not exceed program income limits.
- B. Applicants must disclose social security numbers for all family members at least 6 years of age and older and provide proof of the numbers reported.
- C. All adults in each applicant family must sign an Authorization for Release of Information prior to receiving assistance and annually thereafter.
- D. The unit for which the family is applying must be the family's only residence.
- E. An applicant must agree to pay the rent required by the program under which the applicant will receive assistance.
- F. Only U.S. citizens or eligible noncitizens may receive assistance under Section 8, Section 236, Rent Supplement, Rental Assistance Payment (RAP), and Section 202/8 programs.
- G. All information reported by the family is subject to verification.
- H. Various subsidy or insurance programs may impose additional occupancy restrictions.

3-6 Income Limits

HUD establishes income limits and revises them annually to ensure that federal rental assistance is provided only to low-income families. This paragraph defines income limits and describes how the owner must use them to determine applicant eligibility for HUD-subsidized multifamily properties. The following paragraphs describe which schedules apply to each type of subsidy.

A. Income Eligibility

Except under limited circumstances, in order for an applicant to be eligible for occupancy, the applicant family's annual income must not exceed the applicable income limit (see paragraph 5-4 for the definition of annual income). This limit depends upon the type of subsidy and family size.

B. Establishing Income Limits

1. HUD establishes and publishes income limits for each county or Metropolitan Statistical Area (MSA) in the country. The income limits are based on the median income of the geographic area for which the limit is established. Therefore, the income limit for one city or county is likely to be very different from the income limit for another city or county.
2. Income limits are published annually and are available from the local HUD office or on-line at www.huduser.org.
3. Income limits are based on family size and the annual income the family receives. (Chapter 5, Exhibit 5-1 describes what is included in annual income.)

NOTE: In the case of a property with multiple buildings that are subject to different income limits, the owner may use the higher income limit for the entire property.

C. Timing of Income Eligibility Determinations

1. Owners determine income eligibility prior to approving applicants for tenancy. Owners compare the family's annual income to the appropriate income limit prior to placing an applicant on the waiting list. However, owners may wait until a unit is available to verify the applicant's income eligibility.
2. Owners are required to report the income status of each assisted tenant to HUD at least annually. Tenants whose incomes increase above the income limit continue to receive assistance so long as they qualify for assistance in paying rent under the applicable program rules. (See Chapter 5, Section 4, and Chapter 7, Section 1, for more information)

D. Program Income Limits

The income limits used to determine eligibility vary by program and are as follows: the Below Market Interest Rate (BMIR) income limit, the low-income limit, and the very low-income limit. A family's eligibility for assistance is based on the income limit applicable to the type of housing assistance the family is to receive. A family may be income-eligible for one program but have too high an income for another program.

In addition to the three income limits used to determine eligibility, there is a fourth – the extremely low-income limit – used for income-targeting in Section 8 projects but not for eligibility (see paragraphs 4-5, 4-15, and 4-25). These four income limits are presented in Figure 3-2.

Figure 3-2: Income Limits

All of these income limits are based on the median income for a metropolitan statistical area (MSA). This table shows the four income limits as a percentage of median income in an MSA.	
Income Limit	Median Income for the Area
BMIR income limit	95% of median income
Low-income limit	80% of median income
Very low-income limit	50% of median income
Extremely low-income limit	30% of median income

1. Section 8 Income Eligibility. Section 8 properties, depending upon the effective date of the initial Housing Assistance Payments (HAP) contract for the property, use either the low or very low-income limit.
 - a. Section 8 property owners must use the extremely low-income limit when selecting applicants to fulfill the income-targeting. (See paragraphs 4-5, 4-15, and 4-25.)
 - b. Projects with HAP contracts initially effective on or after October 1, 1981, must admit only very low-income families unless HUD has approved an exception to admit families whose incomes are above the very low-income limit.
 - c. Projects with HAP contracts initially effective prior to October 1, 1981, may admit families up to the low-income limit.

NOTE: Exceptions to income limits may be applicable under limited circumstances. See paragraph 3-7.
2. Section 236, Rent Supplement, and Rental Assistance Payment (RAP). These programs use the low-income limit to establish program eligibility.
3. Section 202 without assistance. **Use the Section 236 low-income limit from the table of Income Limits for Section 221(d)(3) BMIR, Section 235 and Section 236 programs** to establish program eligibility, with the following two exceptions:
 - a. Section 202 projects for which the application was filed prior to December 15, 1962 are not subject to income limits.

- b. For Section 202 projects where income limits above the low-income limit were approved by HUD prior to July 21, 1972, the approved higher income limits remain in effect for these projects.
4. Section 202/162 with Project Assistance Contracts (Section 202 PACs). These contracts use the low-income limit.
5. Section 202/811 with Project Rental Assistance Contracts (Section 202/811 PRACs). These assistance contracts use the very low-income limit (except properties funded in FY 1995, which use the low-income limit). Owners must receive approval from HUD Headquarters to admit families whose incomes are above the very low-income limit. (See *paragraph 3-8 A 3 and 3-20 G.*)
6. Section 221(d)(3) BMIR. This program uses the BMIR income limit, which is set at 95% of the area median income.
7. Summary. Refer to Figure 3-3 for a summary of the income limits used to determine eligibility for each program.
8. Projects with more than one type of subsidy. In projects with a combination of subsidy types, such as Section 221(d)(3) BMIR and Section 236 projects that also have Section 8 in a portion of the property, owners must use the eligibility income limit based on the type of assistance provided to the family. For example, applicants for a Section 236 project that receive Section 8 must qualify using the applicable Section 8 income limit.

Figure 3-3: Income Limits by Program

Subsidy	Type of Income Limit
Section 8 (pre-1981)	Low, very low, and extremely low-income limit
Section 8 (post-1981)	Very low and extremely low-income limit
Section 236	Low-income limit
Rent Supplement	Low-income limit
Rental Assistance Payment (RAP)	Low-income limit
Section 202 without assistance	Low-income limit See paragraph 3-6 D 3 for exceptions
Section 202 with Section 8 Assistance	**Pre-1981** Low, very low, and extremely low-income limit **Post-1981** Very low and extremely low-income limit
Section 202 with Rent Supplement	Low-income limit
Section 202 PACs	Low-income limit
Section 202/811 PRACs, <u>except</u> those funded in FY1995	Very low-income limit
Section 202/811 PRACs funded in FY 1995	Low-income limit
Section 221(d)(3) BMIR	BMIR income limit

E. Income Limits and Family Size

1. Income limits vary by family size. Income limits are published based on the number of persons in the household (for example, 1 person, 2 persons, 3 persons) with increasingly higher income limits for families with more members.
2. Once the owner determines the applicable income limits based on the type of subsidy in the property, the owner must determine the appropriate limits to apply to a family based on family size. In determining the appropriate income limits, the owner must include some individuals as part of the family but exclude others.
3. When determining family size for establishing income eligibility, the owner must include all persons living in the unit except the following:

- a. Live-in aides. A person who resides with one or more elderly persons, near-elderly persons, or persons with disabilities, and who:
 - (1) Is determined to be essential to the care and well-being of the person(s);
 - (2) Is not obligated for the support of the person(s); and
 - (3) Would not be living in the unit except to provide the necessary supportive services.

While a relative may be considered to be a live-in aide/attendant, they must meet the above requirements, especially the last. The live-in aide qualifies for occupancy only as long as the individual needing supportive services requires the aide's services and remains a tenant, and may not qualify for continued occupancy as a remaining family member. Owners are encouraged to use a HUD-approved lease addendum that denies occupancy of the unit to a live-in aide after the tenant, for whatever reason, is no longer living in the unit. (See paragraph 6-12 C for more information.) The lease addendum should also give the owner the right to evict a live-in aide who violates any of the house rules.

- b. Foster children or foster adults. (See the Glossary for the definition.)
 - c. Guests. (See the Glossary for the definition.)
4. When determining family size for income limits, the owner must include the following individuals who are not living in the unit:
- a. Children temporarily absent due to placement in a foster home;
 - b. Children in joint custody arrangements who are present in the household 50% or more of the time;
 - c. Children who are away at school but who live with the family during school recesses;
 - d. Unborn children of pregnant women.
 - e. Children who are in the process of being adopted.
 - f. Temporarily absent family members who are still considered family members. For example, the owner may consider a family member who is working in another state on assignment to be temporarily absent;

- g. Family members in the hospital or rehabilitation facility for periods of limited or fixed duration. These persons are temporarily absent as defined in subparagraph f above; and
 - h. Persons permanently confined to a hospital or nursing home. The family decides if such persons are included when determining family size for income limits. If such persons are included, they must not be listed as the head, co-head, or spouse on the lease or in the data submitted to TRACS but may be listed as other adult family member. This is true even when the confined person is the spouse of the person who is or will become the head. If the family chooses to include the permanently confined person as a member of the household, the owner must include income received by these persons in calculating family income. See paragraph 5-6 C.
5. When determining income eligibility, the owner must count the income of family members only.

F. **Determining the Applicable Income Limit and Eligibility for Assistance**

- 1. After determining family size, the owner must calculate the family's annual income as described in Chapter 5, Section 1.
- 2. After determining family income, the owner must compare the family's annual income to the appropriate income limit for the program and family size.
- 3. Income-eligible families must have annual income that is less than or equal to the income limit for the family size.
- 4. Income-eligible families must also need the assistance. The amount the family would be required to pay using the applicable HUD rent formula must be less than the gross rent for the unit or market rent for Section 236 projects.

NOTE: This requirement does not apply to Section 202 PRACs or Section 811 PRACs.

- 5. **IMPORTANT:** A household does not need to have income to be eligible for assisted housing programs that provide rental assistance through an assistance contract (i.e., Section 8, Rent Supplement, RAP, Section 202 PAC, Section 202 **PRAC** or Section 811 PRAC).

3-7 **Exceptions to the Income Limits in Section 8 Projects**

A. **Post-1981 Universe**

On October 1, 1981, a law became effective limiting income eligibility for Section 8 assistance. At properties with Section 8 contracts effective on or after that date, only families at or below the very low-income limit are eligible for assistance. Under certain circumstances, the owner may request an exception to the very

low-income limits. For this universe of properties, HUD has 15% exception authority, which it allocates on a nationwide basis. Exceptions are described in subparagraph D below.

B. Pre-1981 Universe

In this universe of properties, the law restricts occupancy by families that are other than very low-income to 25% of overall occupancy. Properties with Section 8 contracts effective prior to October 1, 1981, may admit applicants with incomes up to the low-income limit. HUD Headquarters is tracking the 25% restriction on a nationwide basis. The owner does not need to request an exception to admit low-income families to these properties.

**C. Eligible In-Place Tenants
(Exceptions to the income limits that do not require HUD approval)**

In Section 8 properties where fewer than 100% of the units have Section 8 subsidy, some in-place, low-income tenants not receiving Section 8 may be eligible for assistance without HUD approval for an exception to the very low-income limit. This policy is permitted so that families will not be displaced when the circumstances are not the fault of the tenant. Owners may allocate Section 8 assistance to in-place, low-income families only under any of these conditions:

1. The tenant is being converted from RAP or Rent Supplement to Section 8.
2. The tenant is eligible to receive Section 8 in conjunction with the sale of a HUD-owned project,
3. The tenant is paying more than 30% of income toward rent, and is at or below the low-income limit (80% of median income).

D. Exceptions to the Income Limits for Post-1981 Properties Requiring HUD Approval

1. Conditions for exceptions. HUD will consider exceptions to the very low-income limit in a post-1981 property only under certain conditions.
 - a. If very low-income applicants on the waiting list are substantially fewer than the number of units in the project, the owner must market the units to attract very low-income families.
 - b. Requests for exceptions may fall into two categories: *individual tenant* exceptions for an individual family and *project or unit* exceptions for a specific number of units or for an entire property.
2. Individual tenant exceptions. HUD will consider approving owner requests for individual tenant exceptions under the following circumstances:
 - a. An in-place tenant would be displaced as a result of substantial rehabilitation under the Section 8 program; or

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applicants any time that exceptions are not being used or after a periodic review, based on the findings of the review.

E. Procedures for Requesting and Using Exceptions to the Very Low-Income Limit in Post-1981 Section 8 Properties

1. Owners of post-1981 properties must submit a written request for an exception to the very low-income limit, with certification and documentation as specified in Exhibit 3-1, to the HUD Field Office.
 - a. The HUD Field Office makes the final decision on requests for exceptions.
 - b. In cases where HUD is not the Contract Administrator, the Contract Administrator must gather and submit all documentation with its recommendation to the HUD Field Office. The HUD Field Office makes the final decision on requests for exceptions.
 - c. If HUD determines that the criterion for any permitted exception has not been met, its letter to the owner will specify the reasons for its decision and advise the owner that an appeal may be considered if additional documentation is submitted to the HUD Multifamily HUB Director within 30 days. If the request is denied after submission of additional information, there are no further avenues of appeal.
2. When using exceptions, owners must adhere to the following:
 - a. Owners may not reuse individual tenant exceptions if the tenant for whom the exception was granted moves out or stops receiving Section 8 assistance.
 - b. Owners may reuse project or unit exceptions, however, until the HUD Field Office recalls them, or the timeframe permitting exceptions expires.

F. Exceptions to Section 8 Income Targeting Requirements

1. As discussed in paragraph 4-5, owners with Section 8 units are required to ensure that during a fiscal year at least 40% of the units that become available, together with initial certifications of in-place tenants, serve extremely low-income families. If an owner has actively marketed available units to extremely low-income families and has been unable to achieve the 40% target for admissions and initial certifications, the owner is permitted to rent to other eligible families after a reasonable marketing period has expired.
2. The owner must maintain complete records of the marketing efforts targeted to extremely low-income families, and must demonstrate that reasonable efforts were made to fill available units with extremely low-

income families. The owner must also demonstrate that an ongoing effort to meet the 40% requirement is being made.

3. HUD and/or the Contract Administrator will monitor compliance with this requirement.

3-8 Admitting Over-Income Applicants

This paragraph describes the circumstances under which a property owner may admit families that do not meet income limits. The exceptions are listed by program.

A. **Section 8, Section 202/8, Section 202 PAC, Section 202 PRAC and Section 811 PRAC Units**

If the owner is temporarily unable to lease all units to income eligible families, he may admit applicants with incomes that exceed the applicable program income limits with prior written HUD approval. The owner must request HUD approval as follows:

1. For units with Section 8 assistance, the request must be submitted to the Field Office in accordance with the procedures above in paragraph 3-7.
2. For units with Section 202/8 or Section 202 PAC assistance, the owner must submit the information specified in Situation #6 of Exhibit 3-1 to the Field Office. (See paragraph *3-20 G*.)
3. For Section 202 or Section 811 PRAC units, the owner must submit the information specified in Situation #6 of Exhibit 3-1 to the Field Office. The Field Office will forward the waiver request with a recommendation to HUD Headquarters for the final decision on the approval. (See paragraph *3-20 G*.)
4. For Section 202/8, Section 202 PAC, Section 202 PRAC and Section 811 PRAC, also see paragraph *3-20 G * for a discussion of waiver requests for approval to rent to families that are not elderly or disabled.

B. **BMIR Units**

The owner must not admit income-ineligible applicants without prior written HUD approval. Any ineligible families that are admitted must pay market rent.

C. **Section 236, Rent Supplement, and RAP Units**

1. In some situations, owners may admit families with incomes that exceed the applicable program income limits to Section 236, Rent Supplement, or RAP units without HUD approval if there are no income-eligible applicants available and fewer than 10% of the units are already occupied by tenants paying market rent.
2. Any ineligible families that are admitted must pay market rent.

Example – Admission of Market Rent Applicants

- Brookside Gardens is a 100-unit Section 236 project. Currently 92 tenants pay basic rent, 5 tenants pay market rent, and 3 units are vacant. The owner may fill the 3 vacant units with tenants paying market rent if there are no income-eligible applicants available and the owner has taken all reasonable steps to attract eligible families.
- Shady Grove is a 100-unit Section 236 project where 88 current tenants pay basic rent and 10 tenants pay market rent. The owner must fill the 2 current vacancies with income-eligible tenants.

3. The owner must obtain HUD's approval to admit over-income applicants who pay market rent if at least 10% of the units authorized under the interest reduction subsidy are already occupied by tenants paying market rent.
4. For determining the 10% of units described in subparagraphs 2 and 3 above, a unit is defined as follows:
 - a. For properties with Rent Supplement or RAP, "units" include only those units covered by the RAP or Rent Supplement contract.
 - b. For Section 236 properties, "units" include all units in the project.
5. Before admitting any ineligible applicants, the owner must take the following steps:
 - a. Admit all available eligible applicants, unless there is good cause for denying assistance.
 - b. Take all reasonable steps to attract eligible families, including using marketing activities most likely to attract eligible applicants and marketing outside the community or immediate area.
 - c. Place in the file of any ineligible tenant who is admitted, a written certification indicating that the requirements in subparagraphs a and b above have been completed.

D. Admission of Police Officers or Security Personnel in Section 8 Properties

1. For the purpose of deterring crime in and around the property, owners may lease a Section 8 unit to a police officer or security personnel who is over the income limits. Security personnel is defined as a qualified security professional with adequate training and experience to provide security services for project residents.

2. To be eligible, the police officer or security personnel must be employed full-time (at least 35 hours per week) by a governmental unit or private employer and be compensated by their employer for providing policing or security services.
3. Owners must submit a written plan to their HUD Field Office or Contract Administrator for authorization to lease to over-income police or security personnel. The plan must include:
 - a. A description of the existing social and physical conditions of the property and its surrounding area, and the benefits police or security would bring to the community and property;
 - b. The number of units in the property;
 - c. A detailed assessment of the criminal activities and how the safety of the tenants and security of the project is affected;
 - d. The qualifications of the police or security personnel and length of residency;
 - e. A description of how the owner proposes to check the background and qualifications of any security personnel who will reside in the project;
 - f. Disclosure of any family relationship between the police officer or security personnel and the owner. The owner includes all principals or other interested parties;
 - g. A description of the proposed rent, the current contract rent to the unit, the owner's annual maintenance cost for the unit and the amount of any other compensation by the owner to the resident police or security personnel. See paragraph 5-27 for guidance on establishing rent; and
 - h. Owner or authorized agent signature.
4. * Police officers and other security personnel that reside in subsidized units are subject to the same screening criteria as other applicants. *
5. The owner may use the applicable model lease with an added provision that states that the right of occupancy is dependent on continued employment as a police officer or security personnel. (See paragraph 6-12 C for more information)
6. HUD or the Contract Administrator should notify the owners of approval or rejection within 30 days of submission. Unless there are extenuating circumstances, the local HUD Office should approve no more than 1% (or one unit if the property is less than 100 units) of the assisted units on the property for leasing to police or security personnel.

3-9 Disclosure of Social Security Numbers

Applicants must disclose social security numbers (SSNs) in order for the owner to make an eligibility determination. This paragraph explains the requirements and responsibilities of applicants or residents to supply owners with this information, the responsibility of owners to obtain this information, and the consequences for failure by either party.

A. Key Requirements

1. The head of household/spouse/co-head must disclose SSNs for all family members at least six years of age and older.
2. If no SSN has been assigned to a particular family member, the applicant must sign a certification stating that no SSN has been assigned.

B. Required Documentation

Applicants must provide documentation of SSNs. Adequate documentation means a social security card issued by the Social Security Administration (SSA) or other acceptable evidence of the SSN. See **Appendix 3** for documentation requirements.

C. Provisions for Accepting Applicants without Documentation of Social Security Numbers

1. When an applicant has a SSN but does not have the required documentation, the applicant may submit the SSN and certify that the number is accurate but that acceptable documentation could not be provided.
2. Owners must accept the certification and continue to process the individual's application.
3. However, an applicant may not become a participant in the program unless the applicant submits the required SSN documentation to the owner. The applicant must provide SSN documentation to the owner within 60 days from the date on which the applicant certified that the documentation was not available.
4. If the owner has determined that the applicant is otherwise eligible for admission into the property, and the only outstanding verification is that of the SSN, the applicant may retain his or her place on the waiting list for the 60-day period during which the applicant is trying to obtain documentation.
5. After 60 days, if the applicant has been unable to supply the required SSN documentation, the applicant should be determined ineligible and removed from the waiting list (see paragraph 4-20 A).

6. An owner may extend the time period for an additional 60 days if the applicant is at least 62 years old and unable to submit the required documentation within the first 60-day period.

3-10 Residence Criteria

A. Key Requirement

Assisted tenants must have only one residence and receive assistance only in that unit. This rule is meant to ensure that the government pays assistance on only one unit for a family and provides assistance to as many eligible families as possible with available funding.

B. Sole Residence Requirement

1. A family is eligible for assistance only if the unit will be the family's only residence.
2. The owner must not provide assistance to applicants who will maintain a residence in addition to the HUD-assisted unit.

C. Prohibition Against Double Subsidies

Under no circumstances may any tenant benefit from more than one of the following subsidies: Rent Supplement, RAP, Section 202 PAC, Section 202 PRAC or Section 811 PRAC, or project-based Section 8 housing assistance, including Section 202/8.

1. Tenants must not receive assistance for two units at the same time.
2. Tenants must not benefit from Housing Choice Voucher assistance in a unit already assisted through project-based Section 8, Rent Supplement, RAP, Section 202 PAC or Section 202 ****PRAC**** and ****Section**** 811 PRAC.
3. This prohibition does not prevent a person who is currently receiving assistance from applying for an assisted unit in another property. The assisted tenancy in the unit being vacated must end the day before the subsidy begins in the new unit.

3-11 Consent and Verification Forms

A. Key Requirements

Adult members of a family must sign consent forms and, as necessary, verification documents, so that the owner can verify sources of family income and family size. The owner must consider a family ineligible if the adult members refuse to sign applicable consent and verification forms. See Chapter 5, Section 3, for additional detailed information on these forms.

1. All members of an applicant or tenant family who are at least 18 years of age and each family head and spouse regardless of age must sign the HUD-required consent forms (form HUD-9887, *Notice and Consent for the Release of Information to HUD and to a PHA* and form HUD-9887-A, *Applicant's/Tenant's Consent to the Release of Information Verification by Owners of Information Supplied by Individuals Who Apply for Housing Assistance*). Each family member age 18 and older must sign form HUD-9887 and form HUD-9887-A. It is not necessary to have each sign a separate form. All adults regardless of whether they report income must sign these forms.
2. All adult members of an applicant or tenant family must sign individual verification forms authorizing the owner to verify family income and other applicable eligibility factors (e.g., disability status).
3. Consent and verification forms protect the rights and privacy of tenants and applicants by allowing them to have control over any information collected about them. See ****Appendix 6**** for sample formats.
4. Owners must comply with the provisions of the federal Privacy Act as well as any state or local laws relating to confidentiality.

B. Who Must Sign Consent and Verification Forms

Consent forms must be signed by:

1. The head of household (regardless of age);
2. The spouse or co-head of household (regardless of age); and
3. Any other family member who is 18 years old or older.

C. Provisions for Refusal to Sign

If the applicant or tenant, or any adult member of the applicant's or tenant's family, does not sign and submit the consent form as required in 24 CFR 5.230, the following statements apply:

1. The owner must deny assistance and admission to the applicant; or
2. The owner must terminate assistance to the tenant (see paragraph 8-5 regarding terminations).

3-12 Restriction on Assistance to Noncitizens

A. Overview

By law, only U.S. citizens and eligible noncitizens may benefit from federal rental assistance. Compliance with these rules ensures that only eligible families receive subsidy. These requirements apply to families making application to the property, families on the waiting list, and tenants. This paragraph describes the

procedures owners must use to determine applicant eligibility based on citizenship/immigration status.

NOTE: See Chapters 4, 7, and 8 for other citizenship and eligible immigration status requirements. (Denial of assistance is addressed in paragraph 4-31, changes in subsidy are addressed in paragraph 7-11, and termination of assistance is addressed in paragraph 8-7.)

B. Key Requirements

1. Assistance in subsidized housing is restricted to the following:
 - a. U.S. citizens or nationals; and
 - b. Noncitizens who have eligible immigration status. *
2. All applicants for assistance must be given notice of the requirement to submit evidence of citizenship or eligible immigration status at the time of application. The entity responsible for receiving the documentation, where possible, must arrange to provide the notice in a language that is understood by the individual if the person is not proficient in English. (See Exhibits 3-3 and 3-4 for a sample notice and its accompanying Family Summary Sheet.)
3. All family members, regardless of age, must declare their citizenship or immigration status. (See Exhibit 3-5 for a sample **Sample Citizenship** Declaration.)
4. Noncitizens (except those age 62 and older) must sign a Verification Consent Form (see **Sample Verification Consent Form in Exhibit 3-6**) and submit documentation of their status or sign a declaration that they do not claim to have eligible status. Noncitizens age 62 and older must sign a declaration of eligible immigration status and provide a proof of age document. U.S. citizens must sign a declaration of citizenship. Owners may establish a policy of requiring additional proof of citizenship for those declaring to be U.S. citizens or nationals.
5. A mixed family—a family with one or more ineligible family members and one or more eligible family members—may receive prorated assistance, continued assistance, or a temporary deferral of termination of assistance. * See subparagraphs O, P and Q below for the requirements that must be met for a mixed family to be eligible for assistance. *
6. Applicants who hold a noncitizen student visa are ineligible for assistance, as are any noncitizen family members living with the student. For noncitizen students with a citizen spouse or citizen children, see the rules in paragraph 3-12 R.2 below.

C. Administration of Restriction on Assistance to Noncitizen

Owners are responsible for administering the restriction on assistance to noncitizens in accordance with regulations. When administering the restriction, the owner must treat all applicants equally, applying the same noncitizen rule procedures without regard to race, color, national origin, sex, religion, disability, or familial status, and must comply with the nondiscrimination requirements described in Chapter 2 of this handbook.

D. Protection from Liability for Project Owners

HUD will not take any compliance, disallowance, penalty, or other regulatory action against an owner with respect to any error in the owner's determination of eligibility for assistance based on citizenship or immigration status when:

1. The owner established eligibility based upon verification of eligible immigration status through the verification system described in regulations and this handbook;
2. The owner provided an opportunity for the family to submit evidence in accordance with regulations and this handbook;
3. The owner waited for completion of DHS verification of immigration status in accordance with regulations and this handbook;
4. The owner waited for completion of the DHS appeal process provided in accordance with regulations and this handbook, if applicable; and
5. The owner provided an informal meeting in accordance with regulations and this handbook, if applicable.

E. Reviewing a Family's Citizenship/Immigration Status

Owners generally consider citizenship/immigration status once for each family, but they must do so more frequently if immigration status or family composition is likely to change (e.g., when a family member applies for a change in immigration status). (See ****Sample Owner's Summary of Family**** in Exhibit 3-7 for tracking applicants' declarations and the owner's verification.)

1. Owners determine the applicant's citizenship or immigration status during the initial eligibility determination, prior to move-in.
2. As part of the annual or interim recertification process, owners must determine the citizenship/immigration status of tenants from whom the owner has not previously collected the proper documentation or whose documentation suggested that their status was likely to change.
3. If the status of a family member in a mixed family changes from ineligible to eligible, the family may request an interim recertification.

4. The required evidence of citizenship/immigration status for any new family member must be submitted at the first interim or regular recertification after the person moves to the unit.

F. Applicability

The restriction on assistance to noncitizens applies to all properties covered by this handbook except the following:

1. Section 221(d)(3) BMIR properties;
2. Section 202 PAC;
3. Section 202 PRAC; and
4. Section 811 PRAC.
5. Section 202 projects with units not receiving assistance under the Rent Supplement or Section 8 programs.

G. Notification to Applicants

1. Owners must give each applicant, at the time of application, notification of the requirement either to submit evidence of citizenship or eligible immigration status or to choose not to claim eligible status. A sample notice is included in * Exhibit 3-3 *. The notification must do as follows:
 - a. State that financial assistance is contingent on submission and verification of citizenship or eligible immigration status;
 - b. Describe the type of evidence that must be submitted;
 - c. Give the time period in which evidence must be submitted; and
 - d. State that assistance may be prorated, denied, or terminated if any or all family members are determined ineligible for assistance.
2. Owners may notify families that they are eligible for assistance, or for partial assistance, as a mixed family. A sample notification of the verification results and the family's eligibility status is included in Exhibits 3-10 and 3-11.
3. Owners must notify families in writing if they are found to be ineligible based upon citizenship/immigration status in accordance with requirements described in paragraph 4-31. The sample notification of the results of verification on noncitizen status included in Exhibits 3-8 and 3-9 includes appropriate language.

H. Owner Preparation to Collect Documentation of Citizenship/Immigration Status

Owners are required to verify with the Department of Homeland Security (DHS) the validity of documents provided by applicants. To do so, owners must:

1. Obtain computer software to install on the owner's personal computer, an access code and user ID by calling the Office of Multifamily Housing at HUD headquarters. HUD will record the required information and notify DHS to provide the computer software and access to the verification system to the owner. If more than one personal computer is used, it is necessary to request computer software and user IDs for each computer. Multiple users can use a single computer but a unique user ID is needed for each computer user.
2. Upon receipt of the software, access code and user ID, the owner is able to use the automated system to obtain primary and in many instances, secondary verification.
3. If the owner does not have a personal computer or a CD drive and Windows on their personal computer, it will be necessary to verify immigration status using the paper process. A completed Document Verification Request, Form G-845S, and photocopies of the immigration documentation must be mailed to the local immigration office to receive verification of validity of the documents.

I. Required Documentation of Citizenship/Immigration Status

1. The owner must obtain the following documentation for each family member regardless of age:
 - a. From U.S. citizens, a signed declaration of citizenship. Owners may require verification of the declaration by requiring presentation of a U.S. birth certificate or U.S. passport.
 - b. From noncitizens 62 years and older, a signed declaration of eligible noncitizen status and proof of age;
 - c. From noncitizens under the age of 62 claiming eligible status:
 - (1) A signed declaration of eligible immigration status;
 - (2) A signed consent form; and
 - (3) One of the DHS-approved documents listed in Figure 3-4.
2. Noncitizens not claiming eligible immigration status may elect to sign a statement that they acknowledge their ineligibility for assistance.

Figure 3-4: Acceptable DHS Documents

- Form I-551, *Alien Registration Receipt Card* (for permanent resident aliens).
- Form I-94, *Arrival-Departure Record* annotated with one of the following:
 - ◆ “Admitted as a Refugee Pursuant to Section 207”;
 - ◆ “Section 208” or “Asylum”;
 - ◆ “Section 243(h)” or “Deportation stayed by Attorney General”; or
 - ◆ “Paroled Pursuant to Section 212(d)(5) of the INA.”
- Form I-94, *Arrival-Departure Record* (with no annotation) accompanied by one of the following:
 - ◆ A final court decision granting asylum (but only if no appeal is taken);
 - ◆ A letter from an DHS asylum officer granting asylum (if application was filed on or after October 1, 1990) or from an DHS district director granting asylum (application filed was before October 1, 1990);
 - ◆ A court decision granting withholding of deportation; or
 - ◆ A letter from an asylum officer granting withholding of deportation (if application was filed on or after October 1, 1990).
- Form I-688, *Temporary Resident Card* annotated “Section 245A” or “Section 210.”
- Form I-668B, *Employment Authorization Card* annotated “Provision of Law 274a.12(11)” or “Provision of Law 274a.12.”
- A receipt issued by the DHS indicating that an application for issuance of a replacement document in one of the above-listed categories has been made and that the applicant’s entitlement to the document has been verified.
- Form I-151, *Alien Registration Receipt Card*.
- Other acceptable evidence. If other documents are determined by the DHS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the *Federal Register*.

J. Timeframes for Submitting Evidence of Citizenship/Immigration Status to the Owner

1. Applicants must submit required documentation of citizenship/immigration status no later than the date the owner initiates verification of other

eligibility factors. Because of the prohibition against delaying assistance to obtain verification of citizenship/immigration status, owners are advised to implement procedures to verify eligible immigration status in advance of other verification efforts.

2. If the applicant cannot supply the documentation within the owner's specified timeframe, the owner may grant the applicant an extension of not more than 30 days, but only if the applicant certifies that the documentation is temporarily unavailable and additional time is needed to collect and submit the required documentation. Although the extension period may not exceed 30 days, the owner may establish a shorter extension period based on the circumstances of the individual case.
3. The owner must inform the applicant in writing if an extension request is granted or denied. If the request is granted, the owner must include the new deadline for submitting the documentation. If the request is denied, the owner must state the reasons for the denial in the written response. When granting or rejecting extensions, owners must treat applicants consistently.

K. Prohibition Against Delay of Assistance

1. Owners may not delay the family's assistance if the family submitted its immigration **documentation** in a timely manner but the DHS verification or appeals process has not been completed.
 - a. If a unit is available, the family has come to the top of the waiting list, and at least one member of the family has been determined to be eligible, the owner must offer the family a unit. **The owner must provide assistance to the family member determined to be eligible and to those family members that submitted their immigration documents on time. If any family members did not provide the required immigration documentation, then the assistance for the family must be prorated.**
 - b. Because of the prohibition against delaying assistance **to family members who have provided the required immigration documentation in a timely manner**, owners are advised to implement procedures to verify eligible immigration status in advance of other verification efforts. *
 - c. Owners continue to provide assistance to **those family members who submitted their immigration documentation in a timely manner** until their immigration status has been verified.

Example – DHS Verification Process Delayed

John and Mary Yu brought in the immigration documents for **John and for their two daughters** immediately upon the owner's request. **Citizenship for Mary had already been determined when they first applied for assistance.** John's brother, who will live with them, has not yet been able to locate his papers. The SAVE system could not provide primary verification on the Yus, and secondary verification had to be requested.

The Yus were the fourth family on the waiting list for a 3-bedroom unit, but their name has come to the top of the list more rapidly than expected. First, there were two unexpected move-outs; then, two of the families above the Yus declined the units offered.

The owner must offer the Yus the available 3-bedroom unit. The owner will provide prorated assistance **based on Mary being eligible, John and the two daughters having submitted their required immigration documentation in a timely manner and John's brother not having submitted his required immigration documentation.** The prorated assistance will be 4/5 of full assistance. If the immigration documentation collected later indicates that **any family members are not eligible, the assistance will be prorated providing assistance only for the eligible family members.** "If the owner receives the secondary verification information back from DHS and learns that the two daughters are eligible non-citizens but John is not an eligible non-citizen, the owner must process an interim recertification removing assistance for John. John's brother still has not submitted any immigration documentation. The prorated assistance will now be 3/5 of full assistance. The owner must give the family the required 30-day notice of increase in their rent.

If, however, the owner receives the secondary verification information back from DHS and learns that the two daughters and John are eligible non-citizens and John's brother submits his immigration documentation and is determined to be an eligible non-citizen, the owner will process an interim recertification providing full assistance to the family.**

2. Once the owner has determined the citizenship/immigration status of a family assisted prior to completion of the verification or appeal process, the owner must do as follows:
 - a. Provide full assistance to a family that has established the eligibility of all of its members;
 - b. Offer continued prorated assistance to a mixed family, or temporary deferral of termination of assistance * (See subparagraph Q for eligibility requirements) * if the family does not accept the offer of prorated assistance; or
 - c. Offer temporary deferral of termination of assistance to an ineligible family. At the end of the deferral period the family must either pay market rent or vacate the unit.

(Mixed families are defined in subparagraph N below, and prorated assistance is described in subparagraph P. Temporary deferral of termination of assistance is addressed in subparagraph Q.)

L. Verifying Information on Immigration Status

Owners must verify the validity of documents provided by applicants or tenants. The personal computer method provides automated status verification when the information is contained in the Alien Status Verification Index (ASVI) database. It also automates the paper secondary verification process, which eliminates in most instances the completion of the paper Form G-845S. If the owner is unable to obtain the results using the automated primary and secondary verification method, the owner must attempt to obtain results using the secondary verification paper process.

1. Primary verification.
 - a. Owners must conduct primary verification of eligible immigration status only for persons claiming eligible immigration status.
 - b. Owners must conduct primary verification through the SAVE ASVI database, the Department of Homeland Security (DHS) automated system. After obtaining computer software, access code and user ID by contacting the Office of Multifamily Housing at HUD (see subparagraph H above), owners can access SAVE with a personal computer.
 - c. After accessing the ****ASVI**** database, the owner enters the required data fields. The personal computer system will display one of the following messages for immigration status confirmation on the screen.
 - (1) Lawful Permanent Resident
 - (2) Temporary Resident
 - (3) Conditional Resident
 - (4) Asylee
 - (5) Refugee
 - (6) Cuban\Haitian Entrant
 - (7) Conditional Entrant
2. Secondary verification. If the message "institute secondary verification" is displayed on the screen, the manual verification process must be used.

- a. Within 10 days of receiving an “Institute Secondary Verification” response, the owner must prepare DHS Form G-845S, *Document Verification Request*. The owner must send DHS Form G-845S and photocopies of the DHS documents submitted by the applicant to the DHS office serving the property’s jurisdiction. DHS Form G 845S is provided in Exhibit 4-2. Instructions for completing and mailing the DHS Form G 845S are found in Appendix **2-B of this handbook. This information is taken from DHS’ current Systematic Alien Verification for Entitlements (SAVE) Program Instructions Manual and should be used until such time as the instruction manual is updated by DHS and included in its entirety in Appendix 2-A.**
- b. The DHS will return to the owner a copy of DHS Form G-845S indicating the results of the automated and manual search.

M. Appealing Determinations of Ineligibility

1. The owner must notify the family in writing as soon as possible if the secondary verification process returns a negative result. A sample notice to the family is included in Exhibits 3-10 and 3-11. The sample notice describes the tenant or applicant family’s options. The family has 30 days from receipt of the notice to choose which option to follow. See paragraph 4-31 for additional information on denying assistance based upon ineligible immigration status.
2. The family may appeal the owner’s decision directly to the DHS. The family must send a copy of the appeal directly to the owner. The DHS should respond to the appeal within 30 days.
 - a. If the DHS decision results in a positive determination of eligibility, the owner can provide the family with housing assistance.
 - b. If the DHS decision results in a negative determination of eligibility, the family has 30 days to request a hearing with the owner.

N. Mixed Families

1. A mixed family is one whose members include citizens and eligible immigrants as well as noncitizens without eligible immigration status.
2. Mixed families that were in occupancy and received full assistance prior to the verification of citizenship/immigration status may be eligible for one of three types of assistance.
 - a. Continued assistance if the family was receiving assistance prior to June 19, 1995 (see subparagraph O below);
 - b. Prorated assistance (see subparagraph P below); or

- c. Temporary deferral of termination of assistance (see subparagraph Q below).

- 3. Applicant families that are mixed are eligible only for prorated assistance.

O. Continued Assistance

- 1. A mixed family who was receiving assistance on June 19, 1995, is entitled to continue receiving the same level of assistance if the following apply:
 - a. The family head, spouse, or co-head was a citizen or had eligible immigration status; and
 - b. The family did not include any members who did not have eligible immigration status, except for the head, spouse, parents of the head of household, parents of the spouse, or children of the head or spouse.
- 2. Eligibility for continued assistance must have been established prior to November 29, 1996.
- 3. If, after November 29, 1996, anyone is added to a family, including a head of household, spouse, parents of the head of household or spouse, or children of the head of household or spouse, the family is not eligible for continued assistance at the full level, but may receive prorated assistance (see subparagraph P below).

P. Prorated Assistance

If a family is eligible for prorated assistance and is not receiving continued assistance, and if the termination of the family's assistance is not temporarily deferred, the amount of assistance the family receives is adjusted based on the number of family members who are eligible compared with the total number of family members. The prorated assistance is calculated by multiplying a family's full assistance by a fraction.

NOTE: See Exhibits 3-12, 3-13, and 3-14 for more information on proration procedures regarding the restriction of assistance to noncitizens.

- 1. Section 8. For Section 8 assistance programs, the number of eligible people in the family divided by the total number of persons in the family determines the fraction. Then, this fraction is multiplied by the full assistance payment. The reduced assistance payment results in a revised tenant rent for the family.

Example – Section 8 or Rent Supplement Prorated Rent

Family A has four persons. Three are citizens, and one does not have eligible immigration status. The gross rent for the unit is \$500. The family's Total Tenant Payment (TTP) is \$100.

Gross rent	\$500
TTP	<u>-\$100</u>
Section 8 assistance	\$400
Fraction is	
<u>Number of eligible family members</u>	<u>3</u>
Total number of family members	4
Prorated assistance	$\$400 \times 3/4 = \300
Tenant rent increase (assistance less prorated assistance payment)	$\$400 - \$300 = \$100$
New family rent (TTP + tenant rent increase)	$\$100 + \$100 = \$200$

**Example – Section 8 Prorated Rent
(with utility allowance)**

Family B has five persons. Three are citizens, and two do not have eligible immigration status. The contract rent for the unit is \$500. The utility allowance is \$30. The family's TTP is \$100.

Contract rent	\$500
Utility allowance	<u>+\$30</u>
Gross rent	\$530
TTP	<u>-\$100</u>
Section 8 Assistance	\$430
Fraction is	
<u>Number of eligible family members</u>	<u>3</u>
Total number of family members	5
Prorated assistance	$\$430 \times 3/5 = \258
Increase in TTP (assistance less prorated assistance)	$\$430 - \$258 = \$172$
New tenant rent (TTP + increase – utility allowance = tenant rent)	$\$100 + \$172 - \$30 = \242

2. Rent Supplement. The Rent Supplement paid on the family's behalf is the amount they would otherwise be entitled to, multiplied by the fraction for which the numerator is the number of eligible people in the family and the denominator is the total number of people in the family.
3. Section 236. For Section 236 properties, the fraction is the number of ineligible persons over the total number in the family. The proration increases the rent the family is otherwise paying by an amount equal to the difference between the market rent and the rent the family would otherwise pay, multiplied by the fraction.
4. Section 236 with RAP, Rent Supplement, or Section 8 LMSA. If a property receives a combination of Section 236 with RAP, Rent Supplement, or Section 8 LMSA assistance, the owner must prorate both the Section 236 portion of the assistance and the RAP, Rent Supplement, or Section 8 assistance payment. The owner determines the new prorated rent by calculating the difference between market rent and basic rent multiplied by the fraction of ineligible family members. To determine the family's rent increase, the owner adds this total to the assistance payment multiplied by the same fraction of ineligible family.

Example – Project-Based Subsidy (Section 236) Programs

Family C has four persons and currently pays the 236 basic rent. Three are citizens, and one does not have eligible immigrant status.

Basic rent	\$300
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Market rent	\$500
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Fraction is	
$\frac{\text{Number of ineligible family members}}{\text{Total number of family members}}$	$\frac{1}{4}$

Rent increase	$\$500 - \$300 = \$200 \times 1/4 = \50
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New prorated rent	$\$300 + \$50 = \$350$
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Q. Temporary Deferral of Termination of Assistance

1. * Families that were receiving assistance on June 19, 1995 under one of the programs covered by the non-citizen rules are eligible for temporary deferral of termination of assistance. If the following applies:
 - a. Family has no eligible members; or
 - b. Mixed family qualifies for prorated assistance (and does not qualify for continued assistance) and chooses not to accept the partial assistance; or
2. The deferral allows the family time to find other suitable housing before HUD terminates assistance. During the deferral period, the family continues to receive its current level of assistance. *
3. The initial deferral period is for six months and may be extended for an additional six-month period, not to exceed 18 months.
 - a. At the beginning of each deferral period, the owner must inform the family of its ineligibility for financial assistance and offer the family information concerning, and referrals to assist in finding, other affordable housing.

****NOTE:** If the family receiving assistance on June 19, 1995 includes a refugee under section 207 of the Immigration and Nationality Act, or an individual seeking asylum under section 208 of that Act, a deferral can be given to the family and there is no time limitation on the deferral period. The 18 month deferral limitation does not apply. **

Example – Project-Based and Individual Tenant Subsidy Programs Prorated Rent

Family D has four persons. Three are eligible immigrants, and one has elected not to contest ineligible status. The family's TTP is \$200. The gross rent for the family is the Section 236 basic rent, which is \$300. The market rent is \$500.

Market rent	\$500
Basic rent	\$300
TTP	\$200
Assistance payment	\$100

Fraction is

Number of ineligible persons	$\frac{1}{4}$
Total number of family members	

Section 236 calculation

Project-based subsidy (market rent less basic rent)	$\$500 - \$300 = \$200$
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Project-based subsidy times fraction	$\$200 \times \frac{1}{4} = \50
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RAP, Rent Supplement, or Section 8 Calculation

Assistance payment times fraction	$\$100 \times \frac{1}{4} = \25
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New tenant rent (TTP + Section 236 proration + tenant based subsidy proration)	$\$200 + \$50 + \$25 = \275
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- b. Before the end of each deferral period, the owner must determine whether affordable housing is available to the family and whether to extend the deferral of termination of assistance.
 - (1) To extend a deferral period, an owner must determine that no affordable housing is available. The owner must inform the family of the owner's determination at least 60 days before the current deferral period expires. The owner's determination should be based on the following:
 - A vacancy rate of less than 5% for affordable housing of the appropriate unit size in the housing market for the area in which the housing is located;
 - The local jurisdiction's Consolidated Plan, if applicable;

- Availability of affordable housing in the market area; and
 - Evidence of the family's efforts to obtain affordable housing in the area.
- (2) To terminate assistance, the owner must determine that affordable housing is available, or that the maximum deferral period has been reached.
 - (3) If eligible for prorated assistance, the family may request and begin to receive prorated assistance at the end of the deferral period.
 - (4) Affordable housing for the purpose of temporary deferral of assistance is housing that:
 - Is not substandard;
 - Is the appropriate size for the family; and
 - Can be rented by the family for an amount less than or equal to 125% of the family's * total tenant payment (TTP),* including utilities.

R. Prohibition of Assistance to Noncitizen Students

Noncitizen students and their noncitizen families may not receive assistance. Noncitizen students are not eligible for continuation of assistance, prorated assistance, or temporary deferral of termination of assistance.

1. A noncitizen student is defined as an individual who is as follows:
 - a. A resident of another country to which the individual intends to return;
 - b. A bona fide student pursuing a course of study in the United States; and
 - c. A person admitted to the United States solely for the purpose of pursuing a course of study as indicated on an F-1 or M-1 student visa.
2. This prohibition applies to the noncitizen student's noncitizen spouse and children. However, spouses and children who are citizens may receive assistance. For example, a family that includes a noncitizen student married to a U.S. citizen is a mixed family.

3-13 ****Determining Eligibility of Students for Assistance**

A. Eligibility of Students for Section 8 Assistance

1. Owners must determine a student's eligibility for Section 8 assistance at move-in, annual recertification, initial certification (when an in-place tenant begins receiving Section 8), and at the time of an interim recertification if one of the family composition changes reported is that a household member is enrolled as a student.
2. Section 8 assistance shall not be provided to any individual who:
 - a. Is enrolled as either a part-time or full-time student at an institution of higher education for the purpose of obtaining a degree, certificate, or other program leading to a recognized educational credential;
 - b. Is under the age of 24;
 - c. Is not married;
 - d. Is not a veteran of the United States Military;
 - e. Does not have a dependent child;
 - f. Is not a person with disabilities, as such term is defined in 3(b)(3)(E) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)(3)(E)) and was not receiving section 8 assistance as of November 30, 2006). (See Definition E in Figure 3-6);
 - g. Is not living with his or her parents who are receiving Section 8 assistance; and
 - h. Is not individually eligible to receive Section 8 assistance **and** has parents (the parents individually or jointly) who are not income eligible to receive Section 8 assistance. (See paragraph 3-33 for verifying parents eligibility.)
3. For a student to be eligible independent of his or her parents (where the income of the parents is not relevant), the student must demonstrate the absence of, or his or her independence from, parents. While owners may use additional criteria for determining the student's independence from parents, owners must use, and the student must meet, at a minimum **all** of the following criteria to be eligible for Section 8 assistance. The student must:
 - a. Be of legal contract age under state law;
 - b. Have established a household separate from parents or legal guardians for at least one year prior to application for occupancy,
or

Meet the U.S. Department of Education's definition of an independent student. (See the Glossary for definition of Independent Student);

- c. Not be claimed as a dependent by parents or legal guardians pursuant to IRS regulations; and
 - d. Obtain a certification of the amount of financial assistance that will be provided by parents, signed by the individual providing the support. This certification is required even if no assistance will be provided.
- 4. Any financial assistance a student receives (1) under the Higher Education Act of 1965, (2) from private sources, or (3) from an institution of higher education that is in excess of amounts received for tuition is included in annual income, except if the student is over the age of 23 with dependent children or if the student is living with his or her parents who are receiving Section 8 assistance. (See Glossary for expanded definition of Student Financial Assistance.)
 - 5. If an ineligible student is a member of an applicant household or an existing household receiving Section 8 assistance, the assistance for the household will not be prorated but will be terminated in accordance with the guidance in paragraph 8-6 A.

NOTE: An owner cannot evict or require an ineligible student to move from a unit as long as the student is in compliance with the terms of the lease.

Example:

A household is made up of two students living together and who are currently receiving Section 8 assistance. The household is made up of:

- one student who is 22 years old, is head of household, and has a dependent child
- another student who is the co-head and who does not meet the eligibility requirements in paragraph 3-13 A.2.

In order for the household to be eligible for Section 8 assistance, each individual student must meet the student eligibility requirements.

In this example, the 22-year old student is eligible because he or she has a dependent child. However, since it has been determined that the other student is ineligible, the household is not eligible to receive Section 8 assistance, and the assistance for the household must be terminated in accordance with program guidance. The household's rent will be increased to the applicable rent for the unit (contract, basic, market), as long as the ineligible student remains in the unit.

If the ineligible student moves out of the unit, the remaining household members may again be eligible for Section 8 assistance, if available. If the household composition no longer qualifies the household for the unit size, the household may be required to move to an appropriate size unit when one is available, or, with the approval of the owner, the household may move in another eligible person as a member of the household and remain in their same unit. The owner cannot evict or require the ineligible student to move, as long as the student is in compliance with the terms of the lease.

B. Eligibility of Students Under Other Assistance Programs

1. Owners must determine a student's eligibility for assistance at move-in, initial or annual recertification, and at the time of an interim recertification if one of the changes reported is that a household member is enrolled as a student at an institution of higher education.
2. The student must meet **all** of the following criteria to be eligible. The student must:
 - a. Be of legal contract age under state law;
 - b. Have established a household separate from parents or legal guardians for at least one year prior to application for occupancy,
or
Meet the U.S. Department of Education's definition of an independent student. (See the Glossary for definition of Independent Student);
 - c. Not be claimed as a dependent by parents or legal guardians pursuant to IRS regulations; and

- d. Obtain a certification of the amount of financial assistance that will be provided by parents, signed by the individual providing the support. This certification is required even if no assistance will be provided.**

Section 2: Project Eligibility

3-14 Key Regulations

This paragraph identifies key regulatory citations pertaining to Section 2: Project Eligibility. The citations and their titles (or topics) are listed below.

A. Eligibility for Admission to Section 8 Projects

- 24 CFR part 5, subpart D (Definitions for Section 8)

B. Eligibility for Admission to Individual Section 202, Section 202/8, Section 202/162 PAC, Section 202 PRAC, and Section 811 PRAC Projects

1. 24 CFR part 891, subparts A, B, C, and D (Section 202 PRAC and Section 811 PRAC projects)
2. 24 CFR part 891, subpart E (Section 202/8 and Section 202 PAC projects)

C. Occupancy Standards

- 24 CFR 236.745; 880.603; 881.601; 883.701; 884.214 and 219; 886.121, 125, and 132; 886.321, 325, and 329; 891.410 and 420; 891.610 and 620; and 891.750 and 760 (Selection and admission of assisted tenants, and occupancy limitations)

3-15 Program versus Project Eligibility

- A. *Program eligibility* determines whether applicants are eligible for assistance.
- B. *Project eligibility* establishes whether applicants are eligible to reside in the specific project to which they have applied. Three things may affect the match between an applicant and the applicant's eligibility for occupancy in a particular project:
 1. The extent to which all or some of the units in a project are designated for specific family types, such as those who are elderly or disabled;
 2. The project-specific occupancy standards established by the owner, the family size, and the unit sizes available in the project; and

3. In some instances, a family's intention to lease using a housing-choice voucher subsidy that may be used in some projects and not in others.
- C. Although individual programs often serve more than one tenant population, individual projects might not.
- D. There are multiple steps in determining the match between a project's eligibility requirements and a particular applicant's eligibility to live in the project. Steps to review applications are:
 1. Confirm the eligibility rules for the project;
 2. Determine the applicant family type in relation to project eligibility rules;
 3. Determine the current occupancy of project units in relation to the populations intended to be served;
 4. Compare the applicant's characteristics in relation to the availability of units; and
 5. Decide the appropriate response to the applicant: (1) meets eligibility and unit available, (2) meets eligibility but unit not available, or (3) does not meet eligibility.

3-16 Determining the Eligibility of a Remaining Member of a Tenant Family

- A. Periodically, family composition changes after initial occupancy. If the qualifying person leaves the unit, a determination must be made as to whether the remaining member of the household will be eligible to receive assistance. Eligibility depends upon the type of project occupied and other issues.
- B. The following basic requirements for eligibility must be met for a person to qualify as a remaining member of a household:
 1. The individual must be a party to the lease when the family member leaves the unit.
 2. The individual must be of legal contract age under state law.
 3. The remaining family member is defined in Section 202 and Section 811 ****regulations**** as the surviving member or members of an elderly family or family with disabilities that was a party to the lease and living in the assisted unit with the now deceased member of the family at the time of his or her death.
 - a. The remaining family member, based on the death of the family member, is eligible to remain in the unit but must pay rent based on income. In this case, eligibility of the remaining family member, as defined by the death of the family member, is not reviewed.

- b. If the individual who establishes eligibility for the project leaves the unit for any reason other than death in a Section 202/8, Section 202 PAC, Section 202 PRAC or Section 811 PRAC project, the owner must determine if the individual(s) still residing in the unit meet the eligibility requirements for the project, income and age or disability. If the individual is not eligible for the project, he/she may not receive rental assistance and depending upon the type of project, he or she may or may not be allowed to remain in the unit. In a 202/8 or a Section 202 PAC project, the individual may remain in the unit but must pay contract rent. In a Section 202 PRAC or 811 PRAC project, the individual may not remain in the unit.
4. See Figures 3-5 and 3-6 for definitions used in determining project eligibility.

3-17 Definitions of Elderly and Disability Used to Determine Project Eligibility

Definitions to establish eligibility or obtain program benefits as an elderly family or person with disabilities vary by program and in the Section 202/8, Section 202 PAC and Section 202 **PRAC** and **Section** 811 PRAC programs eligibility can vary by project. Also, some projects receive assistance from more than one program. Figure 3-5 indicates which definitions apply by type of program. Figure 3-6 presents the relevant definitions of elderly and disabled families.

Figure 3-5: Applicable Definitions for Elderly and Disability - Determining Project Eligibility Summary

Type of Project	Definition of Elderly	Definition of Disability
Section 8 New Construction Section 8 Substantial Rehabilitation Section 8 State Agency RHS Section 515/8 Section 8 Property Disposition Set-Aside Section 231 with Section 8	Definition A – Elderly Family	Definition D – Disabled Family Definition E – Person with Disabilities
Section 236 (insured and uninsured) Section 236 (insured and uninsured) with Section 8 Loan Management Set-Aside Section 236 (insured and uninsured) with RAP Section 236 (insured and uninsured) with Rent Supplement Section 221(d)(3) BMIR with Rent Supplement Section 221(d)(3) BMIR with Section 8 Preservation Projects Section 221(d)(3) BMIR (without Section 8)	Note: For Section 236 and 221(d)(3) properties, see Paragraph * 3-18 B.*	Note: For Section 236 and 221(d)(3) properties, see Paragraph * 3-18 B.*
Section 202 without rental assistance	Single people aged 62 or older; households the head of which (or the spouse) is aged 62 or more (12 U.S.C. 1701q(d)(4) as added by P.L. 86-372(9/23/59)	None
<p>*NOTE: Under the Section 202/8, Section 202 PAC and Section 811 Programs, project eligibility may be limited to persons qualifying under a specific disability category: persons with physical disabilities, chronically mentally ill individuals, and developmentally disabled individuals.</p>		

Figure 3-5: Applicable Definitions for Elderly and Disability - Determining Project Eligibility Summary

Type of Project	Definition of Elderly	Definition of Disability
*Section 202/8	Definition B – Elderly Family	Definition G – Disabled (Handicapped) Family Definition H – Person with Disabilities (Handicapped person) Definition I – Nonelderly Disabled (Handicapped) Family
*Section 202 PAC	NA	Definition G – Disabled (Handicapped) Family Definition H – Person with Disabilities (Handicapped person)
Section 202 PRAC	Definition C – Elderly Person	NA
* Section 811 PRAC	NA	Definition F – Disabled Household Definition H – Person with Disabilities

* NOTE: Under the Section 202/8, Section 202 PAC and Section 811 Programs, project eligibility may be limited to persons qualifying under a specific disability category: persons with physical disabilities, chronically mentally ill individuals, and developmentally disabled individuals.

Figure 3-6: Applicable Definitions of Elderly and Disability - Determining Project Eligibility

(taken from federal regulations as cited at each definition)

<p style="text-align: center;">Elderly Definitions</p> <p>Definition A – Elderly Family. [24 CFR 5.403]</p> <p>**</p> <p>Elderly Family. Elderly family means a family whose head or spouse or sole member is a person who is at least 62 years of age. It may include two or more persons who are at least 62 years of age living together, or one or more persons who are at least 62 years of age living with one or more live-in aides.</p> <p>Definition B – Elderly Family. [24 CFR 891.505] Elderly families are:</p> <ol style="list-style-type: none"> (1) Families of two or more persons, the head of which (or his or her spouse) is 62 years of age or older; (2) The surviving member or members of a family described in paragraph (1) living in a unit assisted under subpart E of this part (Section 202 loans) with the now deceased member of the family at the time of his or her death; (3) A single person who is 62 years of age or older; or (4) Two or more elderly persons living together or one or more such persons living with another person who is determined by HUD, based upon a licensed physician's certificate provided by the family, to be essential to their care or well-being. <p>Definition C – Elderly Person. [24 CFR 891.205] An elderly person is a household composed of one or more persons at least one of whom is 62 years of age or more at the time of initial occupancy.</p>	<p style="text-align: center;">Disability Definitions</p> <p>Definition D – Disabled Family. [24 CFR 5.403] A disabled family is a family whose head, spouse, or sole member is a person with disabilities. It may include two or more persons with disabilities living together, or one or more persons with disabilities living with one or more live-in aides.</p> <p style="text-align: center;">(Continued)</p>
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Figure 3-6: Applicable Definitions of Elderly and Disability - Determining Project Eligibility*(taken from federal regulations as cited at each definition)*

Definition E – Person with Disabilities [24 CFR 5.403]. A person with disabilities for purposes of program eligibility:

- (1) Means a person who:
 - (i) Has a disability, as defined in 42 U.S.C. 423;
 - (A) Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; or
 - (B) In the case of an individual who has attained the age of 55 and is blind, inability by reason of such blindness to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he/she has previously engaged with some regularity and over a substantial period of time. For the purposes of this definition, the term blindness, as defined in section 416(i)(1) of this title, means central vision acuity of 20/200 or less in the better eye with use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for the purposes of this paragraph as having a central visual acuity of 20/200 or less.
 - (ii) Is determined, pursuant to HUD regulations, to have a physical, mental, or emotional impairment that:
 - (A) Is expected to be of long-continued and indefinite duration,
 - (B) Substantially impedes his or her ability to live independently, and
 - (C) Is of such a nature that the ability to live independently could be improved by more suitable housing conditions; or
 - (iii) Has a developmental disability, as defined in Section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(8)), i.e., a person with a severe chronic disability that
 - (A) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
 - (B) Is manifested before the person attains age 22;
 - (C) Is likely to continue indefinitely;
 - (D) Results in substantial functional limitation in three or more of the following areas of major life activity:
 - a. Self-care,
 - b. Receptive and expressive language,
 - c. Learning,
 - d. Mobility,
 - e. Self-direction,
 - f. Capacity for independent living, and
 - g. Economic self-sufficiency; and
 - (E) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.

(Continued)

Figure 3-6: Applicable Definitions of Elderly and Disability - Determining Project Eligibility

(taken from federal regulations as cited at each definition)

Definition E – Person with Disabilities (continued)

- (2) Does not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome;
- (3) For purposes of qualifying for low-income housing, does not include a person whose disability is based solely on any drug or alcohol dependence; and
- (4) Means person with disabilities (individual with handicaps), as defined in 24 CFR 8.3, for purposes of reasonable accommodation and program accessibility for persons with disabilities.

Definition F – Disabled Household. [24 CFR 891.305] Disabled household means a household composed of:

- (1) One or more persons at least one of whom is an adult (18 years or older) who has a disability;
- (2) Two or more persons with disabilities living together, or one or more such persons living with another person who is determined by HUD, based upon a certification from an appropriate professional (e.g., a rehabilitation counselor, social worker, or licensed physician) to be important to their care or well-being; or
- (3) The surviving member or members of any household described in paragraph (1) of this definition who were living in a unit assisted under this part (Section 811 Capital Advance) with the deceased member of the household at the time of his or her death.

Definition G – Disabled (Handicapped)* Family. [24 CFR 891.505] Disabled (handicapped) family means:

- (1) Families of two or more persons the head of which (or his or her spouse) is a person with disabilities (handicapped);
- (2) The surviving member or members of any family described in paragraph (1) of this definition living in a unit assisted under subpart E of this part (Section 202 loans) with the deceased member of the family at the time of his or her death;
- (3) A single person with disabilities (handicapped person) over the age of 18; or
- (4) Two or more persons with disabilities (handicapped persons) living together, or one or more such persons living with another person who is determined by HUD, based upon a licensed physician's certificate provided by the family, to be essential to their care or well-being.

(Continued)

Figure 3-6: Applicable Definitions of Elderly and Disability - Determining Project Eligibility*(taken from federal regulations as cited at each definition)*

Definition H – Person with a Disability (Handicapped Person).* [24 CFR 891.505 and 891.305] A person with disabilities means:

- (1) Any adult having a physical, mental, or emotional impairment that is expected to be of long-continued and indefinite duration, substantially impedes his or her ability to live independently, and is of a nature that such ability could be improved by more suitable housing conditions.
- (2) A person with a developmental disability, as defined in Section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(8)), i.e., a person with a severe chronic disability that:
 - (i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
 - (ii) Is manifested before the person attains age 22;
 - (iii) Is likely to continue indefinitely;
 - (iv) Results in substantial functional limitation in three or more of the following areas of major life activity:
 - (A) Self-care,
 - (B) Receptive and expressive language,
 - (C) Learning,
 - (D) Mobility,
 - (E) Self-direction,
 - (F) Capacity for independent living, and
 - (G) Economic self-sufficiency; and
 - (v) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.
- (3) A person with a chronic mental illness, i.e., a person who has a severe and persistent mental or emotional impairment that seriously limits his or her ability to live independently, and whose impairment could be improved by more suitable housing conditions.
- (4) Persons infected with the human acquired immunodeficiency virus (HIV) who are disabled as a result of infection with the HIV are eligible for occupancy in the Section 202 projects designed for the physically disabled, developmentally disabled, or chronically mentally ill depending upon the nature of the person's disability. (24 CFR 891.505)

Note: A person whose sole impairment is alcoholism or drug addiction (i.e., who does not have a developmental disability, chronic mental illness, or physical disability that is the disabling condition required for eligibility in a particular project) will not be considered to be disabled for the purposes of the Section 202 program.

- (5) A person infected with the human acquired immunodeficiency virus (HIV) and a person who suffers with alcoholism or drug addiction, provided they meet the definition of "person with disabilities" in Section 811 (42 U.S.C) 8013(k)(2). A person whose sole impairment is a diagnosis of HIV positive or alcoholism or drug addiction (i.e., does not meet the qualifying criteria in Section 811 will not be eligible for occupancy in a section 811 project. (24 CFR 891.305)

Figure 3-6: Applicable Definitions of Elderly and Disability - Determining Project Eligibility

(taken from federal regulations as cited at each definition)

Definition I – Nonelderly Disabled (Handicapped)* Family. [24 CFR 891.505] A nonelderly disabled (handicapped) family means a disabled family in which the head of the family (and spouse, if any) is less than 62 years of age at the time of the family's initial occupancy of a project.

* **NOTE:** The term *handicapped* appears in a number of regulatory definitions that have not yet been updated to reflect current statutes. In this handbook, HUD replaced *handicapped* with the term *disabled, disability, or impairment* to reflect current statutes. The parenthetical reference to handicapped indicates that the term handicapped has been replaced with disabled, disability, or impairment in that definition.

3-18 Eligibility Requirements for Admission to Elderly Projects, By Program Type Covered by Title VI, Subtitle D of the Housing and Community Development Act of 1992

Title VI, Subtitle D of the Housing and Community Development Act of 1992 (Title VI-D) authorizes owners to establish a preference for elderly families in certain Section 8 assisted properties that were designed primarily for occupancy by elderly families if certain requirements are met. Title VI-D also permits owners of certain other federally assisted properties that were designed in whole or part for the elderly to continue to restrict occupancy to elderly families in accordance with the rules, standards, and agreements governing occupancy at the time of development of the project if certain requirements are met. While owners must comply with all relevant sections pursuant to Title VI-D, owners should pay close attention to Sections 651 and 658 with respect to eligibility and tenant selection. *Section 3-18 A * provides guidance on the optional elderly preference for covered Section 8 properties. *Section 3-18 B * provides guidance on restricting occupancy to elderly families in other federal assistance programs.

A. Owner-Adopted Preferences for Elderly, * Disabled, Nonelderly Disabled, and Near-Elderly Disabled * Families

Section 651 of Title VI, Subtitle D of the Housing and Community Development Act of 1992 permits owners of “covered Section 8 housing projects” designed primarily for occupancy by elderly families to adopt a selection preference for elderly families. An owner may, but is not required to, implement this preference. If the owner adopts the preference, it must be implemented in accordance with the rules described in this paragraph.

1. Applicability. Owners of properties assisted through the following programs ****(insured and non-insured)**** are eligible to implement this preference:
 - a. Section 8 New Construction;

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- b. Section 8 Substantial Rehabilitation;
 - c. State Housing Agency programs for Section 8 New Construction and Substantial Rehabilitation;
 - d. Rural Housing 515/8; and
 - e. Section 8 Property Disposition Set-Aside (applies only to properties that involve substantial rehabilitation).
2. Definitions. The following definitions are used when implementing this preference:
- a. An elderly family is one in which the head of the household, co-head, or spouse is at least 62 years of age. (See Figure 3-6, Definition A.)
 - b. A near-elderly family is a family whose head, spouse, or sole member is a person with disabilities who is at least 50 years of age, but below the age of 62; or two or more persons with disabilities who are at least 50 years of age but below the age of 62, living together; or one or more persons who are at least 50 years of age but below the age of 62, living with one or more live-in aides.
 - c. A nonelderly disabled family is one in which the head of the household, co-head, or spouse is disabled and 18 to 49 years of age. (See Figure 3-6, Definition D.)
3. Owners must be able to demonstrate that the property was originally designed for occupancy primarily by elderly families to implement an elderly preference. Owners must be able to produce one primary source of information or two secondary sources of information showing that the project was intended to house elderly families.
- a. Primary sources: Identification of the project (or portion of the project) as serving elderly families should be documented in at least one primary source such as:
 - (1) The application submitted in response to the notice of funding availability;
 - (2) The terms of the notice of funding availability under which the application was solicited;
 - (3) The regulatory agreement;
 - (4) The loan commitment;
 - (5) The bid invitation;

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- (6) The owner's management plan;
 - (7) Any underwriting or financial document collected at or before loan closing; or
 - (8) Application for Mortgage Insurance
- b. Secondary sources. If an owner does not have at least one primary source, two or more secondary sources of evidence may be used such as:
- (1) Lease records from the first two years of occupancy for which records are available showing that occupancy has been restricted primarily to households where the head, spouse, or sole member is 62 years of age or older;
 - (2) Evidence that services for elderly persons have been provided, such as services-funding by the Older Americans Act, transportation to senior citizen centers, or programs coordinated with the Area Agency on Aging;
 - (3) Project unit mix with more than 50% of efficiencies and one-bedrooms; and
 - (4) Other relevant historical data, unless clearly contradicted by other comparable evidence.
- c. Sources in conflict.
- (1) If one primary source is contradictory to another primary source used to establish the use for which the project was originally designed, the owner cannot make the election of preferences for elderly families based upon primary sources alone.
 - (2) In any case, where primary sources do not provide clear evidence of original design of the project for occupancy primarily by elderly families or when primary sources conflict, secondary sources may be used to establish the use for which the project was originally designed.
 - (3) In the event that HUD staff is requested to make a decision based upon "totality of circumstances", HUD staff should thoroughly research HUD records prior to making such a decision. If there is uncertainty regarding the weight of the available source documents used for determining eligibility, HUD staff must render a decision that the project was not designed primarily to serve the elderly.

4. An owner is not required to obtain approval from HUD prior to implementing the elderly preference. Although the owner is not required to submit documentation to HUD prior to implementing the elderly preference, an owner must provide the documentation as evidence of eligibility to apply the preference upon HUD's request.
5. When implementing the preference, an owner must:
 - a. Notify nonelderly families on the waiting list of the decision to implement this preference and of the impact the decision will have on nonelderly families on the waiting list.
 - b. Reserve a percentage of the units for occupancy only by disabled families or individuals who are neither elderly nor near-elderly (collectively referred to as "nonelderly disabled persons/families") that is equal to the lesser of:
 - (1) The higher of the percentage of units occupied by nonelderly disabled families on (i) January 1, 1992, or (ii) October 28, 1992; or
 - (2) 10% of the total number of units in the project.

NOTE: Although the reservation of units is capped at 10% of the total number of units, the owner can exceed the 10% cap as long as the units exceeding the cap are leased in a nondiscriminatory manner.

Example – Establishing the Number of Units for Nonelderly Persons with Disabilities

An owner has a covered Section 8 housing property with 100 units. On January 1, 1992, nonelderly persons/families with disabilities occupied 10 of the units. On October 28, 1992, nonelderly persons/families with disabilities occupied 20 units.

- A. The owner would have to compare the number of units occupied by nonelderly disabled persons/families on January 1, 1992, (10 units) with the number of units occupied by nonelderly disabled persons/families on October 28, 1992, (20 units) and use the **higher** number. In this case, it would be **20 units**.
- B. 10% of 100 units = **10 units**

To obtain the percentage or number of units that must remain available for nonelderly disabled persons/families, the owner must take the number of units determined above for **Item A (20 units)**, compare with **Item B (10 units)**, and use the **lower** number for the number of units that must be reserved.

Therefore, Item B is less than Item A, and **the owner must reserve 10 units** for occupancy by nonelderly disabled persons/families.

Note: If an owner determines that there were no nonelderly persons occupying units on those two dates, the required number of units to be reserved for nonelderly persons with disabilities can be zero (0).

- 6. If an owner exceeds the established number of units and leases additional units to nonelderly disabled families and the units later become available for occupancy, the owner may fill the vacancies with elderly families/persons, as long as the established set-aside percentage of units is met.
- 7. The set-aside number of units for nonelderly disabled families is not unit specific. A nonelderly disabled family may occupy a unit without accessible design features. Elderly families may occupy any unit as long as the set-aside number of units for nonelderly persons with disabilities is preserved.
- 8. Owners may exceed the set-aside number of units for nonelderly disabled families and are encouraged to do so if the need exists in the community. Owners who exceed the set-aside number of units are not required to continue to exceed the set-aside number of units.
- 9. If there is an insufficient number of elderly families available to fill the units designated for elderly families, owners may establish a preference for near-elderly persons with disabilities for these units.

10. If there is an insufficient number of nonelderly disabled families available for the units designated for nonelderly persons with disabilities, the owner may establish a preference for near-elderly persons with disabilities for these units.
11. If there are an insufficient number of near-elderly disabled families available, the owner shall make units generally available for occupancy by families who have applied and are eligible, without regard to preferences.
12. ****Elderly Restriction at RHS Section 515/8 Projects.** Owners of RHS Section 515/8 projects designated as elderly are limited to housing elderly persons or persons with disabilities meeting the Definitions A, D or E in Figure 3-6. Age restrictions cannot be waived at these projects. If there is an insufficient number of eligible applicants and the owner wishes to house persons who do not meet the elderly or disabled eligibility requirements in Figure 3-6, the owner must request RHS to reclassify the project designation from elderly to family. In cases where RHS has determined there is no longer a demand for the elderly units in the community where the project is located and changes the project designation to family, HUD or CA should consult with Legal Counsel to determine if there is a need to amend the assistance contract.**

B. Owner-Adopted Elderly Restrictions in Certain Federally Assisted Housing Projects that were Designed to Serve the Elderly

Section 658 of Title VI of Subtitle D of the Housing and Community Development Act of 1992 (HCDA) permits owners of certain federally assisted projects to restrict occupancy in such projects (or portions of projects) to elderly families in accordance with the rules, standards, and agreements governing occupancy in effect at the time of the development of the project.

1. Applicability. Only owners of properties that were originally designed for the elderly and assisted through the following programs are eligible to apply this restriction:
 - a. Section 236 ******(insured and non-insured)******;
 - b. Section 221(d)(3) BMIR; and
 - c. Section 202 of the Housing Act of 1959, as Section 202 existed before the enactment of the Cranston-Gonzalez National Affordable Housing Act (i.e., Section 202 projects developed prior to 1991). *See paragraph 3-20 B for 202/8 eligibility requirements.*

NOTE: In order to restrict occupancy to the elderly in accordance with Section 658, the project must have continuously operated solely as an elderly project.

2. Definitions. The following definitions are used when implementing this restriction:
 - a. For Section 236 projects (insured and noninsured with or without Rent Supplement, RAP, or LMSA) and for the Section 221 (d) (3) BMIR projects (with or without Rent Supplement) the following definitions are used:
 - (1) An Elderly person or family is defined as a household where the head or spouse is age 62 or older.
 - (2) A disabled or handicapped person or family is defined by the Section 202 definition in effect at the time the project was endorsed. See the definitions for Section 202 projects in Figure 3-5 for projects endorsed prior to the change of definition in 1974. In 1974 the definition of handicap was amended to include other categories of disabilities. See the definition for Section 202/8 in Figure 3-5)
 - b. For the Section 202 Direct Loan Program funded from Fiscal Year 1960 through Fiscal Year 1964 the following definitions are used:
 - (1) Elderly is defined as single people aged 62 or older; households the head of which (or the spouse) is aged 62 or more.
 - (2) Nonelderly Disabled are not included in the definition and are not eligible.
 - c. For the Section 202 Direct Loan Program funded from Fiscal Year 1965 through Fiscal Year 1974 the following definitions and requirements are used:
 - (1) Elderly is defined as single people aged 62 or more or households the head of which (or the spouse) is aged 62 or more.
 - (2) The definition of elderly was amended to include “handicapped” in 1965. A person shall be considered handicapped if such person is determined to have a physical impairment which is (a) expected to be of long-continued and indefinite duration; (b) substantially impedes his ability to live independently; and, (c) is of such a nature that such ability could be improved by more suitable housing conditions.
 - (3) Ten percent of the units in a Section 202 project for the elderly were designed for people with mobility impairments and could house persons (elderly or nonelderly) who required the accessibility features of the unit; a Section

202 project could also be developed just for non-elderly persons with physical disabilities.

- (4) To qualify for admission to one of the units for the elderly, the applicant must be an elderly family (see definitions in Figures 3-5 and 3-6).
- (5) To qualify for admission to one of the units specifically designed for persons with physical disabilities, the head or spouse must be at least 18 years old and have a disability requiring the accessible design features of the unit.

NOTE: Persons with degenerative conditions (e.g., AIDS, multiple sclerosis, or cancer) qualify for one of these units if they require the accessible design features of the unit.

- (6) Any Section 202 direct loan project developed specifically for persons with disabilities is not covered under Section 658.
- (7) Persons who meet the definition of a "person with disabilities" and who do not require the accessible features of these units may be admitted to the project only if they qualify as elderly for one of the units designed for elderly occupancy.
- (8) In assigning units designed for disabled persons needing accessible features, owners must treat elderly applicants with disabilities and nonelderly applicants with disabilities equally, unless one applicant has a preference adopted by the owner such as a residency preference or a preference for working families, disability or other groups as described in paragraph 4-6 C.

- 3. Owners must be able to demonstrate that the property was originally designed for occupancy only by elderly families in order to restrict occupancy to the elderly. Owners must be able to produce one primary source of information or two secondary sources of information showing that the project was intended to house elderly families.

- a. Primary sources. Identification of the project (or portion of the project) as serving elderly families in at least one primary source such as:
 - (1) The application submitted in response to the notice of funding availability;
 - (2) The terms of the notice of funding availability under which the application was solicited;

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- (3) The regulatory agreement;
 - (4) The loan commitment;
 - (5) The bid invitation;
 - (6) The owner's management plan;
 - (7) Any underwriting or financial document collected at or before loan closing; or
 - (8) Application for Mortgage Insurance
- b. Secondary sources. If an owner does not have at least one primary source, two or more secondary sources of evidence may be used such as:
- (1) Lease records from the first two years of occupancy for which records are available showing that occupancy has been restricted primarily to households where the head, spouse, or sole member is 62 years of age or older;
 - (2) Evidence that services for elderly persons have been provided, such as services-funding by the Older Americans Act, transportation to senior citizen centers, or programs coordinated with the Area Agency on Aging;
 - (3) Project unit mix with more than 50% efficiencies and one-bedrooms; and
 - (4) Other relevant historical data, unless clearly contradicted by other comparable evidence.
- c. Sources in conflict
- (1) If a primary source establishes a design contrary to that established by another primary source upon which the owner would base support that the property is an eligible project, the owner cannot make the election of preferences for elderly families as provided by this paragraph based upon primary sources alone.
 - (2) In any case where primary sources do not provide clear evidence of original design of the project for occupancy primarily by elderly families, including those cases where primary sources conflict, secondary sources may be used to establish the use for which the project was originally designed.

- (3) In the event that HUD staff is requested to make a decision based upon “totality of circumstances”, HUD staff should thoroughly research HUD records prior to making such a decision. If there is uncertainty regarding the weight of the available source documents used for determining eligibility, HUD staff must render a decision that the project was not designed to serve the elderly.
4. An owner is not required to submit documentation that the project was originally designed for occupancy by the elderly for HUD approval prior to implementing the elderly restriction. An owner must produce the documentation as evidence of eligibility to apply the restriction when asked by HUD.
5. Waiving the Elderly Restriction. An owner may request to waive the elderly restriction due to market conditions and/or to maintain the economic soundness of the project. In such cases, HUD approval is required before the restriction can be waived and the waiting list opened to nonelderly persons. For example, if an owner of a project governed by 658 elects to continue to restrict occupancy to the elderly under this section of the Act, the applicants eligible for occupancy would be based on this restriction. However, if an owner lifts the restriction to fill a vacant unit in the project and rents to a nonelderly tenant, the owner may, but is not required to, retain the elderly restriction for those units previously occupied by non-elderly tenants. The owner may retain the elderly restriction only if the unit was rented to a nonelderly tenant due to market conditions and/or to maintain the economic soundness of the project. HUD will review the request, and if approved, the HUD approval is not to exceed three years. HUD approval must be obtained to extend the waiver beyond the three-year period. If HUD approval is obtained and there are eligible elderly persons on the waiting list, the owner may select elderly applicants in accordance with the elderly restriction over nonelderly tenants on the waiting list. The owner also has responsibility for updating the Tenant Selection Plan and notifying the nonelderly applicants currently on the waiting list within ten business days of such update. The owner must provide written notification and the notice must be sent to the applicant by certified mail, return receipt requested. Proof of notification to the applicants on the waiting list must be maintained in the project occupancy files.

3-19 Eligibility Requirements for Admission to Elderly Projects, By Program Type Not Covered by Title VI, Subtitle D of the Housing and Community Development Act of 1992

A. Section 231 Projects with Section 8 (not covered by Section 651) and/or Rent Supplement Contracts

The Section 231 program is an elderly housing program that provided that some units may be specifically designed for persons with physical disabilities. A preference could be provided for those individuals who require the features of those units.

1. Projects or parts of projects for the elderly.
 - a. A minimum of 50% of the units in a Section 231 project and a maximum of 100% of the units will have been designated at development as reserved for elderly persons or elderly families.
 - b. Any units specifically designated for elderly families must be occupied only by such families.
 - c. Elderly persons with disabilities are eligible to live in elderly units in Section 231 projects.
2. Units designed for persons with disabilities.
 - a. Owners must give a preference for any unit designed for persons with disabilities to those persons with disabilities of any age who need the features of the units.
 - b. The applicable definition of a person with a disability is referenced in Figure 3-5.
 - c. Owners that wish to serve a greater percentage of persons with disabilities than the percentage specified in the Regulatory Agreement or other loan agreements may do so upon receiving written approval from HUD.

B. Section 221(d)(3) with a Rent Supplement Contract;

1. Projects designed entirely for the elderly must restrict occupancy to elderly families or elderly persons. By their very nature, these projects have no units designed or reserved for nonelderly persons with disabilities.
2. Projects designed in part for the elderly, which have a specific number of units with accessible features designed for persons with disabilities, may restrict occupancy of units without accessible features to elderly families. Those projects cannot restrict occupancy to the elderly for those units designed for persons with disabilities as nonelderly persons with

disabilities are also eligible to occupy those units. For units in the project that are designed for persons with disabilities who need accessible units, owners may not give elderly persons with disabilities priority over nonelderly persons with disabilities.

C. Prepaid Projects with Formerly HUD-Insured Mortgages Under Section 221, Section 231, Section 8 not covered by Title VI D or Property Disposition Set-Aside that does not involve substantial rehabilitation

Owners may restrict occupancy in the elderly units in these projects to only elderly families, but are not required to do so. These projects may also have accessible units. For the accessible units:

1. Owners may not give elderly persons with disabilities priority over nonelderly persons with disabilities.
2. A member of the family must meet the definition of "a person with a disability" and have a disability that requires the accessible features of the unit.

3-20 Eligibility for Admission to Individual Section 202, Section 202/8, Section 202 PAC, and Section 202 and Section 811 PRAC Projects

- A. Section 202 (SH) projects serve the elderly as defined in Definition B in Figure 3-6.
- B. Section 202/8 projects for the elderly serve:
 1. Elderly families as defined in Definition B in Figure 3-6; and
 2. For 10% of the units which are accessible, persons (elderly or nonelderly) who require the accessible features of the unit.

NOTE: When assigning accessible units, owners must treat equally elderly and nonelderly applicants with disabilities who require the accessible features of the unit, unless one applicant has an owner-adopted restriction or preference. See paragraphs *3-18 B* and 4-6 C.

- C. Section 202/8 and Section 202 PAC projects for persons with disabilities serve one or more of the following statutorily recognized categories of disability based upon the population to be served as described in the application for funding and defined in Definition H in Figure 3-6.
 1. Persons with physical disabilities;
 2. Persons with development disabilities; and/or
 3. Persons with chronic mental illness

- D. Section 202 PRAC projects serve a household composed of one or more persons at least one of whom is 62 years of age or more at the time of initial occupancy. See definition C in Figure 3-6.
- E. Section 811 projects serve one or any combination of the following statutorily recognized categories of disability based upon the population to be served as described in the application for funding and defined in definition H in Figure 3-6.
1. Persons with physical disabilities;
 2. Persons with developmental disabilities; or
 3. Persons with chronic mental illness.

In addition, sponsors of Section 811 projects may propose in their applications to restrict occupancy to a subcategory of one of the statutorily recognized categories of disability (e.g., AIDS is a subcategory of physical disability), provided they do not deny occupancy to any otherwise qualified person with a disability in the overall category that the subcategory falls under.

- F. Applicants with disabilities who meet the eligibility requirements for admission to a Section 202/8 project for the elderly or for persons with disabilities or a Section 811 project for persons with disabilities cannot be excluded on the basis of having another disability in addition to the one served by the particular project.

Examples – Eligible Applicants with Disabilities

- An owner of a project with accessible units cannot exclude an otherwise eligible person with a disability requiring an accessible unit, who also has another disability such as chronic mentally illness.
- An owner of a project for the chronically mentally ill cannot exclude an otherwise eligible person from the project because of his or her physical disability.

- G. Leasing Units to Non-Eligible Families
1. If the owner is temporarily unable to lease all units to eligible families, he may request HUD approval to lease one or more units to families that do not meet the income eligibility requirements of 24 CFR Part 5 as follows:
 - a. Section 202/8 or Section 202 PAC
 - (1) A written request for a waiver must be submitted to the HUD Field Office in accordance with Exhibit 3-1.
 - (2) The request must provide documentation of the owner's continuing marketing efforts to attract eligible applicants

and that an increased level of occupancy will prevent financial default and foreclosure.

- (3) HUD's approval of a request must be for a limited time – initially one year. HUD may impose other terms and conditions to the approval that are consistent with program objectives and necessary to protect the loan.
- (4) HUD may reduce the number of units covered by either a HAP or PAC contract if the owner does not comply with the requirements for leasing to families that do not meet the eligibility requirements; or, if HUD determines that the owner's inability to lease to families that do not meet the eligibility requirements is not a temporary problem.

b. Section 202 PRAC or Section 811 PRAC

The owner's written request providing the information specified in Situation 6 of Exhibit 3-1 must be submitted to HUD Headquarters with the recommendation of the HUD Field Office.

- 2. If permitting over-income families to lease one or more units is not sufficient to solve the vacancy problem, in order to protect the financial viability of the project, an owner may request approval to serve a population other than the one(s) it was approved to serve.
 - a. A request to waive the age requirement for a Section 202 project for the elderly must provide documentation of the owner's continuing marketing efforts to attract eligible applicants and that an increased level of occupancy will prevent financial default and foreclosure. The request with the recommendation of the HUD Field Office is sent to the Multifamily Hub for approval except that in the case of a Section 202 PRAC project, the request and recommendation must be sent by the Multifamily Hub to Headquarters for approval.

H. For projects serving persons with disabilities, the owner must apply to the HUD Field Office for permission to serve a different disabled population. The owner must demonstrate a plan to the HUD Field Office that shows the following:

- 1. The owner can adequately serve the proposed disabled population based on past experience in serving the proposed population;
- 2. Funds are available from the state or local government or from other outside sources to pay for any necessary supportive services and a written commitment for funding is provided by the source or the owner;
- 3. The need for the original occupancy category no longer exists;

4. The current tenants can choose to remain in the project or move. If the tenants remain, the owner can begin housing persons in the newly approved category only as vacancies occur; and
5. There are sufficient subsidized units available in the area to house current tenants who are willing to move, as well as **to house individuals who no longer qualify for the housing because of the changed category.**
6. The request and recommendation of the HUD field office is sent to the HUD Multifamily HUB Director for approval.

3-21 Applicants with Housing Choice Vouchers

Owners may receive inquiries or applications from families wishing to use a Housing Choice Voucher in their property. The Housing Choice Voucher program is a form of rental subsidy administered by public housing agencies (PHAs) that allows families to rent units in the marketplace and receive a subsidy from the PHA. The rules governing the use of vouchers in multifamily projects vary depending upon the type of subsidy operating at the project.

A. 100% of Units Receive Assistance under an Assistance Contract

Owners may not admit an applicant with a voucher, unless the applicant agrees to give up the voucher prior to occupancy. Before admitting such applicants, owners must inform voucher holders of the following:

1. The family must be placed on the project waiting list and must give up the voucher when the family moves into the project.
2. If the family later moves out of the project, the project subsidy will not move with the family as it does with a voucher; and
3. The family will need to reapply to the PHA to receive another voucher.

B. Partially Assisted Properties

1. Owners may accept applicants with the housing choice vouchers into units that do not already have a form of rental assistance such as Section 8, RAP, Rent Supplement, Section 202 PAC, or Section 202 PRAC and Section 811 PRAC. Owners may not admit an applicant with a voucher to a unit with Section 8, RAP, or Rent Supplement, Section 202 PAC, or Section 202 PRAC and Section 811 PRAC unless the applicant agrees to give up the voucher prior to occupancy.
2. The PHA and HUD may limit rents that may be charged and subsidies the owners may collect in units where a voucher family is housed. Since these limits vary by locality, owners should discuss rent and subsidy limitations with the local PHA. If the owner accepts a voucher holder, the PHA will perform annual inspections to ensure that the unit meets

housing quality standards, recertify the family annually, and make the assistance payments to the owner.

C. Section 236, Section 221(d)(3) BMIR, and Section 202 Units (without Assistance Contracts)

Owners may accept applicants with the housing choice vouchers into their units. As described in subparagraph B.2 above, the PHA and HUD may limit rents and subsidies. Also, the PHA will conduct annual unit inspections and recertify family income annually prior to making assistance payments.

D. Previously HUD-Owned Projects

1. Previously HUD-owned projects must give a preference to families holding vouchers. (This preference is required by the sales contract and deed executed between HUD and the owner.)
2. The PHA and HUD may limit rents that may be charged and subsidies the owners may collect in units where a voucher family is housed. Because these limits vary by locality, owners should discuss rent and subsidy limitations with the local PHA. If the owner accepts a voucher holder, PHA will perform annual inspections to ensure that the unit meets housing quality standards, recertify the family annually, and make the assistance payments to the owner.

3-22 Eligibility of Single Persons

- A. HUD does not restrict the admission of single persons to assisted housing.
- B. Section 8 Housing Limited to Single Sex Occupancy
 1. Established HUD policy has traditionally allowed universities to separate students according to gender and to provide separate bathroom facilities by gender *based* on compelling privacy reasons. See implementing regulations to Title IX of the Education Amendments of 1972, as amended, 45 C.F.R. Sections 86.32 and 86.33.
 2. The Department also believes that in certain other limited circumstances, limiting occupancy of Section 8 programs to members of one sex may not violate the Fair Housing Act, although the legality of the practice is not settled.
 - a. The Department is aware that under Section 42 of the Internal Revenue Code, housing “must be for use by the general public” to receive Federal low-income housing tax credits. Under Internal Revenue Service interpretations, a housing facility will be deemed to qualify as being “for use by the general public” if it does not violate any HUD policy governing nondiscrimination as expressed in a HUD handbook. This Handbook should not be construed to ban single sex facilities, since the issue as to whether limiting

housing to one sex is permissible depends on the facts and circumstances of the particular case.

- b. The Department does not interpret the Internal Revenue Code to require housing providers to obtain a certification from HUD that they are operating in compliance with nondiscrimination requirements as a prerequisite to obtaining the tax credit or as authorizing or requiring HUD to issue such certifications. This Handbook should not be construed to suggest that facilities which have received the tax credit in the past are operating in violation of the Fair Housing Act.
- c. However, assisted housing providers who wish to do so, may contact HUD Field Office personnel for guidance on the applicability of the Fair Housing Act to their particular housing facility.
- d. Guidance provided by the Department would evidence a staff opinion, based on the information provided at that time, whether the housing facility is operating in accordance with HUD policy governing nondiscrimination as expressed in the HUD handbooks.
- e. However, if a complaint of discrimination were to be filed with HUD alleging that the policy is discriminatory, such guidance would not preclude the Department from determining that the policy is discriminatory, since such a determination can only be made by the responsible HUD officials after a full investigation based on all facts and circumstances. In addition, it should be noted that such guidance cannot insulate housing providers from potential private suits by persons who may feel aggrieved by the policy.

3-23 Occupancy Standards

A. Overview

- 1. Owners must develop and follow occupancy standards that take into account the size and number of bedrooms needed based on the number of people in the family.
- 2. Occupancy standards serve to prevent the over- or underutilization of units that can result in an inefficient use of housing assistance. Occupancy standards also ensure that tenants are treated fairly and consistently and receive adequate housing space. By following the standards described in this paragraph, owners can ensure that applicants and tenants are housed in appropriately sized units in a fair and consistent manner as prescribed by law. Occupancy standards must be part of an owner's tenant selection procedures. Refer to paragraph 4-4 for more details on developing tenant selection procedures.

B. Key Requirements

1. Owners of all properties subject to this handbook, including subsidized housing cooperatives, must assign a family to a unit of appropriate size, taking into consideration all persons residing in the household.
2. Owners ****must**** have written standards describing the project eligibility criteria. Owners have ****discretion**** in developing specific occupancy standards for a property, as long as the standards do not violate fair housing requirements or contain prohibited policies and comply with the following (see * Exhibit 3-2 * for HUD policy guidance).
 - a. Federal, State, and local fair housing and civil rights laws;
 - b. Tenant-landlord laws;
 - c. Zoning restrictions; and
 - d. HUD's Equal Opportunity and nondiscrimination requirements under HUD's administrative procedures.

C. Timeframe for Applying Occupancy Standards

1. Owners apply their occupancy standards before assigning the family to a unit. Owners should review family size and occupancy standards prior to completing all of the required verifications so that if the property cannot accommodate the family, the owner may immediately inform the family of its ineligibility.
2. Owners also compare family composition to occupancy standards when there is a change in family size. This comparison is done to determine whether the family needs to transfer to another unit.

D. Prohibition of Occupancy Standards that Exclude Children

1. The Fair Housing Act prohibits housing providers from discriminating on the basis of familial status, making it illegal to discriminate against families because of the presence of children.
2. Owners may neither exclude families with children from their properties, nor may they develop policies or procedures that have the purpose or effect of prohibiting children (e.g., policies in tenant selection plan, occupancy standards, house rules).
3. Owners may not exclude otherwise eligible elderly families with children from elderly properties or elderly/disabled properties covered by this handbook.

E. General Occupancy Standards

1. Owners have discretion in developing occupancy policies that meet the needs of the specific property. HUD does not prescribe specific policies owners must implement but provides guidelines owners must follow when developing written occupancy standards.
2. HUD's occupancy guidelines are provided in * Exhibit 3-2 *. Generally a two-persons-per-bedroom standard is acceptable. An owner may establish a different standard for assigning unit size based on specific characteristics of the property (e.g., some bedrooms are too small for two persons).
3. An owner's occupancy standards establish the size of the unit a family will occupy, but owners must avoid making social judgments on a family's sleeping arrangement. For example, it is not for the owner to determine whether an unmarried couple may share the same bedroom or whether a young child can share a bedroom with a parent.
4. Owners may consider the size of the unit, the size of the bedrooms, and the number of bedrooms so long as their policy allows for family preferences (within HUD guidelines) to be considered. As owners develop and implement occupancy standards, they must take into consideration the following factors:
 - a. The number of persons in the family;
 - b. The *age,* sex and relationship of family members;
 - c. The family's need for a larger unit as a reasonable accommodation; and
 - d. Balancing the need to avoid overcrowding with the need to avoid underutilization of the space and unnecessary subsidy.
5. If a family, based on the number of members, would qualify for more than one unit size, the owner must allow the family to choose which unit size they prefer.
6. Counting family members. In order to determine the size of unit that would be appropriate for a particular family, the owner needs to determine the number of family members.
 - a. The owner must count all full-time members of the family.
 - b. The owner must also count all anticipated children. Anticipated children include the following:
 - (1) Children expected to be born to a pregnant woman;
 - (2) Children in the process of being adopted by an adult family member;

- (3) Children whose custody is being obtained by an adult family member;
 - (4) Foster children who will reside in the unit;
 - (5) Children who are temporarily in a foster home who will return to the family; and
 - (6) Children in joint custody arrangements who are present in the household 50% or more of the time.
- c. The owner may count children who are away at school and who live at home during recesses.
- **NOTE:** Owners should not count children who are away at school who have established residency at another address or location as evidenced by a lease agreement. The new address or location is considered the student's principle place of residence.**
- d. The owner must count live-in aides for purposes of determining appropriate unit size.
- e. The owner may establish reasonable standards for counting family members that are temporarily in a correctional facility. For example, it is reasonable for an owner to count a teenager who will return to the family in six months from a detention center. It is not reasonable to count an adult member who may return to the family in two years following incarceration.
- f. The owner must not count nonfamily members, such as adult children on active military duty, permanently institutionalized family members, or visitors.
- g. The owner must count foster adults living in the unit.

F. Assigning a Smaller Unit Than Required

An owner may assign a family to a smaller unit size than suggested by the owners' occupancy policies if the family requests the smaller unit and if all of the following apply:

1. The family is eligible for the smaller unit based upon the number of family members, and occupancy of the smaller unit will not cause serious overcrowding;
2. Assigning a smaller unit results in a lower rent payment for the occupant in a Section 236 or BMIR property; and
3. The assignment will not conflict with local codes.

G. Assigning Units Larger Than Required

1. An owner may assign a family to a larger unit than suggested by the owner's occupancy standards if one of the following conditions exists ******(see exception for assigning a larger unit to a single person in G.2 below) ******:
 - a. No eligible family in need of the larger unit is available to move into the unit within 60 days, the property has the proper size unit for the family but it is not currently available, and the family agrees in writing to move at its own expense when a proper size unit becomes available.
 - b. A family needs a larger unit as a reasonable accommodation for a family member who is a person with a disability.
2. However, a single person must not be permitted to occupy a unit with two or more bedrooms, except for the following persons:
 - a. A person with a disability who needs the larger unit as a reasonable accommodation.
 - b. A displaced person when no appropriately sized unit is available.
 - c. An elderly person who has a verifiable need for a larger unit.
 - d. A remaining family member of a resident family when no appropriately sized unit is available.

H. Change in Family Size After Initial Occupancy

1. After a family moves into a unit, the unit may become overcrowded or underutilized due to a change in family size.
 - a. Rental properties.
 - (1) The owner may require the family to move to a unit of appropriate size. If a unit of appropriate size is not available, the owner must not evict the family and must not increase the family's rent to the market rent. See the example below.

Example - Change in Family Size

Atta and Kumari Gupta live in a 3-bedroom unit at Elmwood Terrace. The Guptas have lived in the unit with their three children for 12 years. However, all of the Gupta children are grown and have moved out of the family. Atta and Kumari Gupta no longer need a 3-bedroom unit and could move into a 1-bedroom unit. Elmwood Terrace has only 2- and 3-bedroom units. If a 2-bedroom unit becomes available, the owner may require the Guptas to move into the smaller unit, but must not require them to move out of the property. If the owner asks the Guptas to move into a 2-bedroom unit, the Guptas may choose to move into it and continue to receive assistance, or remain in the 3-bedroom unit and pay market rent.

- (2) If a family refuses to move to the correct size unit, the family may stay in the current unit and pay the market rent. The owner must not evict the tenant for refusing to move but may evict the family if it fails to pay the market rent in accordance with the lease.

b. Subsidized housing cooperatives.

- (1) Units occupied by families who are not receiving rental assistance under a contract for assistance. In Section 236 and BMIR cooperatives in which the member is receiving no other assistance, the cooperative may establish its own policy on whether the cooperative should:
 - Offer over-housed members smaller units; and
 - Require members who refuse such offers to pay the market rate carrying charge.
- (2) Units occupied by families receiving assistance through an assistance contract. These will typically be families receiving Rent Supplement, RAP, or Section 8 assistance. When an appropriately sized unit becomes available, the cooperative must require an over-housed member to either:
 - Transfer to the appropriately sized unit offered by the cooperative and continue to receive assistance; or
 - Remain in the same unit and pay a higher carrying charge.

The choice remains with the member. If an appropriately sized unit is available, a cooperative may permit an over-housed member to remain in the same unit and continue to receive Section 8/Rent Supplement/RAP assistance only

as long as there is no market for the size of unit the member would be vacating.

- (3) If a family refuses to move to the correct size unit, the family may stay in the current unit and pay the market rate carrying charge. The owner must not evict the tenant for refusing to move but may evict the family if it fails to pay the market rate carrying charge in accordance with the lease.

2. See Chapter 7, Section 3, for additional information about unit transfers for tenants.

I. Change in Need for Accessible Features

If a family is in an accessible unit but no longer needs the accessible features, the owner may request that the family move to another unit in the project. For such a request to be enforceable, this provision must be made in the lease.

Section 3: Verification of Eligibility Factors

3-24 Key Regulations

This paragraph identifies the key regulatory citations pertaining to Section 3: Verification of Eligibility Factors. The citations and their titles are listed below.

- A. 24 CFR 5.659 Family Information and Verification
- B. 24 CFR 5.216 Disclosure and Verification of Social Security and Employer Identification Numbers

3-25 Introduction

Applicants may be assisted only after it is determined that they meet the eligibility criteria for the program and the project. This requirement is intended to ensure that an available subsidy is provided to families that are eligible under the program rules and not provided to ineligible families. Determining eligibility requires that the owner verify information that is provided by the applicant on the application form and in subsequent interviews. In general, applicants are not required to disclose their status with respect to any protected basis; however, if the family requests a reasonable accommodation based upon a disability, the family must disclose its disability status.

Chapter 5, Section 3, of this handbook provides general information and tips on verifying all types of information, including methods to avoid accepting tampered documents and detailed information on verifying income. This section addresses verification of eligibility factors, other than income, about which information must be collected in order to determine eligibility.

3-26 Key Requirements

- A. Owners must verify all income, expenses, assets, family characteristics, and circumstances that affect family eligibility, order of applicant selection, or level of assistance.
- B. Three methods of verification are acceptable to HUD:
 - 1. Third-party verification (written or oral);
 - 2. Review of documents provided by the applicant; or
 - 3. Self-certification.
- C. This section covers Verification of Family Composition, Verification of Family Type and Individual Status, Verification of the Need for an Assistance Animal, Verification of Income Eligibility, Collecting Proof of Social Security Numbers, and Verification of Citizenship and Immigration Status. See Chapter 5, Section 3, for other key requirements regarding verifications, and **Appendix 3** for information about verification methods.

3-27 Verification of Family Composition

- A. Owners may seek verification of family composition only if the owner has clear written policy. Verification is not required.
- B. Owners may use a policy to verify family composition to determine whether children reside in the household 50% or more of the time, as well as determine the appropriate unit size for the family.
- C. Owners may also want to verify the departure of family members reported to have moved out by reviewing the lease signed by the departing member for a new residence, a new driver's license or utility bill showing the departed member's name and a new address **or accepting a signed affidavit from the remaining head of household when reasonable efforts to obtain verification have been exhausted.**
- D. If an owner determines it necessary to verify family composition, information may be collected from sources listed in **Appendix 3**.

3-28 Verification of Family Type and Individual Status

A. Overview

Eligibility for certain projects (as identified in Section 2 of this chapter), certain income deductions, and preferences are based upon whether the family is identified as elderly or disabled, or whether a family has any individual members who are elderly or disabled. Therefore, verifications of age and disability status are very important issues in determining eligibility and rent.

B. Disability

An owner may verify disability to determine whether a family or person meets the definition of disability used to determine eligibility for a project, preferences, or an allowance, or to identify applicant needs for features of accessible units or reasonable accommodations. The owner may not specifically ask for or verify the nature and extent of the disability. There are ways to verify disability status without obtaining detailed information or information that must not be collected. Verification of disability may be obtained through the following methods:

1. A third-party verification form may be sent by the owner to an appropriate source of information, including but not limited to the individual's physician, care worker of the elderly, social worker, psychiatrist, or the Veterans Administration.
 - a. If a third-party form is used, it must be signed by the applicant authorizing the release of such information to the owner.
 - b. The form should provide the definitions of disability used to determine eligibility and rent and should request that the source completing the form identify whether the applicant meets the definition. In this way the owner is not required to make any judgments about whether a condition is considered a disability, and will not have prohibited information.
2. Receipt of social security disability payments is adequate verification of an individual's disability status for programs listed in Figure 3-5 that use definition E for person with disabilities. Such information is obtained through verification of the social security disability payments. See the discussion in Chapter 5, Section 3.

NOTE: Applicants who meet the Social Security's definition of disabled are eligible even if they do not receive social security benefits. Because the Section 202 and Section 811 programs do not use this definition of disability, this note does not apply to applicants for units in Section 202 or 811 projects.

3. Receipt of a veteran's disability benefits does not automatically qualify a person as disabled, because the Veteran's Administration and Social Security Administration define disabled differently.

C. Age

Owners may need to verify age for several reasons: to determine eligibility for a property restricted to elderly persons or families or to determine whether a person is old enough to sign a legally binding contract. Owners may also need to verify age to determine whether a family is entitled to certain allowances based upon the age of the head, spouse, co-head, or minor. Verification of age may be obtained using any of the documents listed in **Appendix 3**.

3-29 Verification of the Need for an Assistance Animal

Some applicants or residents may require the use of assistance animals as a reasonable accommodation for a disability. (See the glossary for a definition of assistance animals).

- A. An owner may verify that the applicant or resident has a disability and that there is a disability-related need for the requested accommodation, in this case the assistance animal.
- B. The owner may require the applicant or resident to provide documentation of the disability and the need for the animal from an appropriate third party, such as a medical provider, mental health provider, or other professional in a position to provide this verification. For example, if a tenant or applicant seeks a reasonable accommodation for an assistance animal that provides emotional support, that individual may be required to provide documentation from a physician, psychiatrist, social worker, or other mental health professional that the animal provides support that alleviates one or more of the identified symptoms or effects of an existing disability.
- C. The owner must implement its policy related to inquiries consistently for all applicants requesting permission to keep an assistance animal. However, a tenant or applicant should not be required to provide documentation of the disability or the disability-related need for the assistance animal if the disability is or the need is readily apparent or already known to the provider. For example, a blind tenant should not be required to provide documentation of his or her disability and the need for a guide dog.

3-30 Verification of Income Eligibility

Verifications of all sources of income required by HUD to be included in a family's income and used to determine applicant eligibility are described further in Chapter 5, Section 3.

3-31 Collecting Proof of Social Security Numbers

- A. Applicants must disclose social security numbers (SSNs) for all family members at least 6 years of age and older, or, if no SSN has been assigned, the member must complete a certification that no SSN has been assigned.
- B. The documentation necessary to verify the SSN of an individual who is required to disclose his or her SSN is a valid SSN card issued by the Social Security Administration or one of the documents listed in **Appendix 3**.
- C. If the applicant cannot supply the original Social Security card and supplies one of the documents listed in **Appendix 3**, the applicant must also certify that the document provided is complete and accurate.

3-32 Verification of Citizenship and Immigration Status

- A. In properties subject to the restriction on assistance to noncitizens (see paragraph 3-12 F), owners may require that applicants provide verification of citizenship and must require that noncitizens provide verification of immigration status. The verification process for immigration status is dependent upon receiving information from the DHS. Because the process of verification can involve a number of steps and may result in "partial" eligibility, verification of immigration status has been covered in Section 1 of this chapter.
- B. ****Access to Services for Persons with LEP.** Housing owners must take reasonable steps to ensure meaningful access to the information and services they provide for persons with LEP. This may include interpreter services and/or written materials translated into other languages. See HUD Guidance referenced in Paragraph 2-9.C for further details.**

3-33 ****Verifying Eligibility of a Student for Assistance**

A. Verification of Eligibility of Students for Section 8 Assistance

- 1. Verifying parents income.
 - a. Owners must verify parents income each time they determine the eligibility of the student to receive Section 8 assistance unless the student can demonstrate his or her independence from parents. (See Paragraph 3-13 for determining a student's eligibility.)
 - b. Owners may accept a signed declaration and certification of income from the parents, which includes a penalty of perjury clause.
 - (1) If the owner determines that the parents declaration and certification of income or their eligibility is questionable, the owner may request and review supporting documentation including, but not limited to:
 - (a) IRS tax returns;
 - (b) Consecutive and original pay stubs;
 - (c) Bank statements;
 - (d) Pension benefit statements;
 - (e) Temporary Assistance to Needy Families (TANF);
 - (f) Social Security Administration award letters; or
 - (g) Other official and authentic documents from a federal, State or local agency.

- (2) If the student's parents refuse to provide a declaration and certification of their income, the student is not eligible for Section 8 assistance unless the student can demonstrate his or her independence from parents.
- (3) Owners may adopt and implement the following criteria for determining whether to obtain the declaration and certification of income from parents individually or jointly:
 - (a) If the student's parents are married and living with each other, obtain the declaration and certification of income from each parent.
 - (b) If the student's parent is widowed or single, obtain the declaration and certification of income from that parent.
 - (c) If the student's parents are divorced or separated, obtain the declaration and certification of income from each parent.
 - (d) If the student has been living with one of his or her parents and has not had contact with or does not know where to contact his or her other parent, obtain from the student a certification addressing the circumstances and that they have not received any financial assistance, directly or indirectly, from the absent parent. The certification must include a penalty of perjury clause. The owner must also obtain from the parent with whom the student has been living or has contact with the declaration and certification of income.
- c. The owner should use the applicable *low* income limit for the parents' family size for the locality where the parents reside when determining the parents' income eligibility for Section 8 assistance. (See paragraph 3-6 E.4 for guidance on determining family size for income limits and paragraph 3-6 F for applying the income limit to determine eligibility for assistance.

If the student's parents live outside of the United States in areas where income limits have not been established for the Section 8 program, the owner should use the applicable *low* income limit for the parent's family size for the same locality used in determining the student's eligibility.

2. Verification of student's independence from parents.

When a student claims his or her independence from parents, owners must verify the student's independence from his or her parents by taking into consideration **all** of the following. Owners must:

- a. Review and verify previous address information to determine evidence of a separate household, or

Verify the student meets the U.S. Department of Education's definition of independent student.
- b. Review prior year income tax returns to verify if a parent or guardian has claimed the student as a dependent (except if the student meets the Department of Education's definition of independent student).
- c. Verify income provided by a parent by requiring a written certification from the individual providing the support. Certification is also required if the parent(s) is not providing support to the student. Financial assistance that is provided by persons not living in the unit is part of annual income.
- d. Verify additional criteria established, if applicable, to use when determining the student's independence from parents. Verification would be obtained in accordance with the owner's policies.
- e. Verify the amount of financial assistance the student receives under the Higher Education Act of 1965, from private sources, or from an institution of higher education.

3. Owners should also verify the following, if applicable:

- a. Age (See paragraph 3-28 C and Appendix 3)

Dependent child (See the Glossary for definition of Dependent Child).
- b. Married
- c. Institution of Higher Education. The owner will need to verify that the school where the student is enrolled meets the Department of Education's definition for an institution of higher education. (See the Glossary for the definition of Institution of Higher Education.)
- d. Tuition (See the Glossary for the definition of Tuition.)
- e. Veteran status (See the Glossary for the recommended definition for Veteran.)
- f. Disabled student was receiving Section 8 assistance on November 30, 2005.

B. Verification of Eligibility of Students for Other Assistance Programs

Owners should follow the guidance in 3-33 A.2 above for verifying the student's eligibility.

Chapter 3 Exhibits

- 3-1. Sample Request for Exception to Limitations on Admission of Families with Incomes Above 50% of the Area Median Income
- 3-2. 12/18/98 Federal Register Notice: Fair Housing Enforcement—Occupancy Standards Notice of Statement of Policy
- 3-3. **Sample** Owner's Notice No. 1
- 3-4. **Sample** The Family Summary Sheet
- 3-5. **Sample Citizenship** Declaration
- 3-6. **Sample** Verification Consent Format
- 3-7. **Sample** Owner's Summary of Family
- 3-8. **Sample** Owner's Notice No. 2 for a Tenant Family
- 3-9. **Sample** Owner's Notice No. 2 for an Applicant Family
- 3-10. **Sample** Owner's Notice No. 3 for a Tenant Family Final Decision on Immigration Status
- 3-11. **Sample** Owner's Notice No. 3 for an Applicant Family Final Decision on Immigration Status
- 3-12. Section 8, RAP, and Rent Supplement Programs – Special Instructions for Determining Prorated Assistance Payment and Prorated Total Tenant Payment/Tenant Rent for Families Subject to Proration Procedures Regarding the Restriction on Assistance to Noncitizens
- 3-13. Section 236 Without Additional Assistance – Special Instructions for Determining Prorated Assistance Payment and Prorated Total Tenant Payment/Tenant Rent for Families Subject to Proration Procedures Regarding the Restriction on Assistance to Noncitizens
- 3-14. Section 236 With Benefit of Additional Assistance – Special Instructions for Determining Prorated Assistance Payment and Prorated Total Tenant Payment/Tenant Rent for Families Subject to Proration Procedures Regarding the Restriction on Assistance to Noncitizens

Exhibit 3-1: Sample Request for Exception to Limitations on Admission of Families with Incomes Above 50% of the Area Median Income

TO: HUD Field Office

FROM: _____

SUBJECT: Request for Exception to Limitations on Admission of Families Whose Income Exceeds Very Low-Income Limit

Project Name _____

Contract No. _____ FHA Project No. _____

This request is for permission to lease (number) unit(s) in the subject project to families with incomes between 51% and 80% of the area median income. We believe this project meets the applicable conditions under situation _____ Chapter 3 of Handbook * 4350.3 REV-1.*

The following justifies the request for exception:

(Provide the supporting documentation required by the following four pages of this Exhibit).

For further information, you may call _____ at _____. I certify that the statements and supporting documentation in this request are true and complete. I also certify that:

- a. I have admitted all available very low-income, qualified applicants; and
- b. I will lease assisted units to families with incomes above 50% of median income only when no very low-income, qualified applicants are available.

NOTE: Include this certification only if you are requesting an exception for Situation 6D.

Signed by:

Owner or owner's representative

Name_____
Signature_____
Title_____
Date

Warning: Under 18 U.S.C. 1001, whoever willingly makes or uses a document or writing he/she knows has any false or fraudulent statement or entry, in any matter under the jurisdiction of any department or agency of the United States, may be fined up to \$10,000 or imprisoned for up to five years, or both.

IMPORTANT: At a minimum, requests for exceptions must include the supporting justification listed below. Situations (1) through (6) are described in paragraph 3-7 D of this handbook.

SITUATION 1: Displaced Tenant

- A. State the name of the tenant for whom the exception is being requested.
- B. State approximately when the tenant would be displaced and why. Name the program under which the rehabilitation is being funded.
- C. State how long the tenant has lived in the project, the tenant's current rent, and the rent the tenant would pay after rehabilitation (without assistance).

SITUATION 2: Project Financed Under Section 11(b) or Section 103

- A. Submit a copy of the portion of the bond documents or other controlling document that specifically obligates the project to lease to low-income families with incomes above 50% of the area median. Provide evidence of the date the document was signed and the period for which it is effective.
- B. Submit evidence that the bondholder or mortgagee has and will continue to enforce that policy. This could be a statement signed by the entity that established a policy.
- C. State what penalties the project will incur for failure to comply with the economic mix described in subparagraph A above.

SITUATION 3: Project Supervised by a State Agency

- A. Submit a copy of the State agency's policy and any document you signed obligating the project to that policy. Provide evidence of the date the policy was first published, the date your agency signed that document, and the term of the document you signed.
- B. Submit evidence that the State agency has been and will continue to enforce its income mix policy. This evidence could be a statement signed by the Agency. The statement must clearly explain both how and how frequently the State agency has monitored and enforced its requirements.

SITUATION 4: Project Approved Based on Agreement to Comply with Local Government's Income Mix Requirements

- A. Submit a copy of the letter the local government sent to the HUD Field Office during development. Be sure the letter shows the date the local government wrote the letter. Also submit a copy of any document you signed or any letter the HUD Field Office issued obligating you to comply with the local government policy.
- B. Discuss whether and how the local government has monitored and enforced its income mix policy.

SITUATION 5: Units Designed for a Specific Occupant Group

- A. Name the group.
- B. Submit a chart showing occupancy of assisted units by unit type (e.g., 2-bedroom, 1-bath; 2-bedroom, 2-bath) for the specific occupant group.

Contract Units Designed For This Occupant Group				
Unit Type	Total Number	Number Vacant	Number of Families on Waiting List for These Units	
			Very Low-Income	Low-Income But Not Very Low-Income

- C. Provide the information requested in subparagraphs B-3, 4, 5, and 6 under Situation 6, but consider **ONLY UNITS DESIGNED FOR THE SPECIFIC OCCUPANT GROUP**.
- D. State the average number of days these units were vacant during the last six months. Divide the total days vacant by the number of units that were vacant. (If this is a new project, use the period since the project has been occupied.)

SITUATION 6: Insufficient Number of Very Low-Income Applicants

- A. Submit a chart showing total occupancy and occupancy of assisted units by unit type (e.g., 2-bedroom, 1-bath; 2-bedroom, 2-bath).

Unit Type	Total Units in the Project		Contract Units		Number of Families on Waiting List	
	Total Number	Number Vacant	Total Number	Number Vacant	Very Low-Income	Low-Income But Not Very Low-Income

- B. Submit the following data:
1. Average number of days units were vacant during the last six months. Divide the total days vacant by the number of units that were vacant. (If this is a new project, use the period since the project has been occupied.)
 - a. For Section 8 units _____

-
- b. For PRAC units _____
 - c. For all other units _____
 2. State the vacancy factor used in development processing.
 3.
 - a. Number of assisted families admitted in last two years. (For new projects, state date of initial occupancy and period the data covers.)

 - b. Number of families in 3.a who were very low-income at admission

 - c. Line 3.b divided by line 3.a: $3.b / 3.a$ _____
 4. Number of current tenants who are:
 - a. Low-income but not very low-income _____
 - b. Very low-income _____
 - c. Paying market rent _____
 5. Describe what you have done to attract very low-income applicants. Specify dates, methods, and whom you contacted. Marketing must include ****contacting**** the local Housing Authority to verify if there is anyone on the Housing Authority waiting list that is income/age eligible. Include copies of recent advertisements. The text of each advertisement must mention the availability of the subsidy to reduce tenant rent to 30% of income and give an example of income eligibility.
 6. Describe what more you will do to attract qualified very low-income applicants and indicate how many you expect to attract during each of the next four quarters.
- C. Submit the following only if you are requesting an exception because the very low-income population is too small to provide sustaining occupancy.
- List all market studies and surveys of which you are aware.
- Include studies you, State agencies, the Rural Housing Service, or anyone else has done. Briefly summarize those studies' conclusions as to the income levels of potential applicants in your project's market area and any nearby market area.
- D. Submit the following additional information if you are requesting an exception because a default is likely.
1. Explain why vacancy payments will not provide adequate protection while you seek very low-income applicants.

2. State the cause of any vacancy payments or cash-flow problems. State which types of units, if any, are particularly hard to rent.
3. For each of the last six months, provide the financial and vacancy information listed below. If some of this information is available on monthly accounting reports already sent to the Field Office, the Field Office may authorize you to submit only the information those reports don't cover.

Financial and Vacancy Data Required for Exceptions Under Situation 6D

Provide the following data for each of the last six months.

Income Expenses

1. Monthly apartment rent potential for whole project
2. Apartment rents collected from HUD and tenants
3. Percent of potential collected (Line 2 / Line 1)
4. Other income earned (specify source)
5. Total income earned (Line 2 + Line 4)
6. Mortgage payment (Principal + Interest) actually required (use workout amount, if applicable)
7. Operating expenses incurred
8. Net income/loss from operations

Month-End Accounts

1. Number of units vacant
 - a. Section 8 units
 - b. Other units
2. Number of units not in rentable condition.
3. Accounts receivable
 - a. From tenants
 - b. HUD
 - c. Others
4. Accounts payable
 - a. From routine operations
 - b. Mortgage delinquency
 - c. Other
5. Cash on hand

**Exhibit 3-2: 12/18/98 Federal Register Notice: Fair Housing Enforcement –
Occupancy Standards Notice of Statement of Policy**

Exhibit 3-3: **Sample Owners Notice No. 1**

Dear (insert name of head of household):

Section 214 of the Housing and Community Development Act of 1980, as amended, prohibits the Secretary of HUD from making financial assistance available to persons other than U.S. citizens or nationals, or certain categories of eligible noncitizens, in the following HUD programs:

- a. Section 8 Housing Assistance Payments programs;
- b. Section 236 of the National Housing Act including Rental Assistance Payment (RAP); and
- c. Section 101/Rent Supplement Program.

You have applied, or are applying for, assistance under one of these programs; therefore, you are required to declare U.S. Citizenship or submit evidence of eligible immigration status for each of your family members for whom you are seeking housing assistance. You must do the following:

1. Complete a Family Summary Sheet, using the attached blank format (**see sample Family Summary Sheet in Exhibit 3-4**) to list all family members who will reside in the assisted unit.
2. Each family member (including you) listed on the Family Summary Sheet must complete a **Citizenship** Declaration (**see Sample Citizenship Declaration in Exhibit 3-5**). If there are 10 people listed on the Family Summary Sheet, you should have 10 completed copies of the **Citizenship** Declaration. The **Citizenship** Declaration has easy-to-follow instructions and explains what, if any other forms and/or evidence must be submitted with each **Citizenship** Declaration.
3. Submit the Family Summary Sheet, the **Citizenship** Declarations, and any other forms and/or evidence to the name and address listed below by (insert date).

This Section 214 review will be completed in conjunction with the verification of other aspects of eligibility for assistance. If you have any questions or difficulty in completing the attached items or determining the type of documentation required, please contact (insert name and telephone number). He/she will be happy to assist you. Also, if you are unable to provide the required documentation by the date shown above, you should immediately contact this office and request an extension, using the block provided on the ****Citizenship**** Declaration Format. Failure to provide this information or establish eligible status may result in your not being considered for housing assistance.

If this Section 214 review results in a determination of ineligibility, you will have an opportunity to appeal the decision. Also, if the final determination concludes that only certain members of your family are eligible for assistance, your family may be eligible for proration of assistance. That means that when assistance is available, a reduced amount may be provided for your family based on the number of members who are eligible.

If assistance becomes available and the other aspects of your eligibility review show that you are eligible for housing assistance, that assistance may be provided to you if at least one member of your household has submitted the required documentation. Following verification of the documentation submitted by all family members, assistance may be adjusted depending on the immigration status verified. You will be contacted as soon as we have further information regarding your eligibility for assistance.

Exhibit 3-4: **Sample Family Summary Sheet**

Member No.	Last Name of Family Member	First Name	Relationship to Head of Household	Sex	Date of Birth
Head					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					

Exhibit 3-5: **Sample Citizenship Declaration **

INSTRUCTIONS: Complete this Declaration for each member of the household listed on the Family Summary Sheet

LAST NAME _____

FIRST NAME _____

RELATIONSHIP TO HEAD OF HOUSEHOLD _____ SEX _____ DATE OF BIRTH _____

SOCIAL SECURITY NO. _____ ALIEN REGISTRATION NO. _____

ADMISSION NUMBER _____ if applicable (this is an 11-digit number found on DHS Form I-94, *Departure Record*)

NATIONALITY _____ (Enter the foreign nation or country to which you owe legal allegiance. This is normally but not always the country of birth.)

SAVE VERIFICATION NO. _____
(to be entered by owner if and when received)

INSTRUCTIONS: Complete the Declaration below by printing or by typing the person's first name, middle initial, and last name in the space provided. Then review the blocks shown below and complete either block number 1, 2, or 3:

DECLARATION

I, _____ hereby declare, under penalty of perjury, that I am _____
(print or type first name, middle initial, last name):

_____ 1. A citizen or national of the United States.

Sign and date below and return to the name and address specified in the attached notification letter. If this block is checked on behalf of a child, the adult who will reside in the assisted unit and who is responsible for the child should sign and date below.

Signature Date

Check here if adult signed for a child: _____

-
- _____ 2. A noncitizen with eligible immigration status as evidenced by one of the documents listed below:

NOTE: If you checked this block and you are 62 years of age or older, you need only submit a proof of age document together with this format, and sign below:

If you checked this block and you are less than 62 years of age, you should submit the following documents:

- a. Verification Consent Format (**see Sample Verification Consent Form in Exhibit 3-6**).

AND

- b. One of the following documents:

- (1) Form I-551, *Alien Registration Receipt Card* (for permanent resident aliens).
- (2) Form I-94, *Arrival-Departure Record*, with one of the following annotations:
 - (a) "Admitted as Refugee Pursuant to section 207";
 - (b) "Section 208" or "Asylum";
 - (c) "Section 243(h)" or "Deportation stayed by Attorney General"; or
 - (d) "Paroled Pursuant to Sec. 212(d)(5) of the INA."
- (3) If Form I-94, *Arrival-Departure Record*, is not annotated, it must be accompanied by one of the following documents:
 - (a) A final court decision granting asylum (but only if no appeal is taken);
 - (b) A letter from an DHS asylum officer granting asylum (if application was filed on or after October 1, 1990) or from an DHS district director granting asylum (if application was filed before October 1, 1990);
 - (c) A court decision granting withholding or deportation; or
 - (d) A letter from an DHS asylum officer granting withholding of deportation (if application was filed on or after October 1, 1990).
- (4) Form I-688, *Temporary Resident Card*, which must be annotated "Section 245A" or "Section 210."
- (5) Form I-688B, *Employment Authorization Card*, which must be annotated "Provision of Law 274a.12(11)" or "Provision of Law 274a.12."

- (6) A receipt issued by the DHS indicating that an application for issuance of a replacement document in one of the above-listed categories has been made and that the applicant's entitlement to the document has been verified.
- (7) Form I-151 Alien Registration Receipt Card.

If this block is checked, sign and date below and submit the documentation required above with this declaration and a verification consent format to the name and address specified in the attached notification. If this block is checked on behalf of a child, the adult who will reside in the assisted unit and who is responsible for the child should sign and date below.

If for any reason, the documents shown in subparagraph 2.b. above are not currently available, complete the Request for Extension block below.

Signature

Date

Check here if adult signed for a child: _____

REQUEST FOR EXTENSION

I hereby certify that I am a noncitizen with eligible immigration status, as noted in block 2 above, but the evidence needed to support my claim is temporarily unavailable. Therefore, I am requesting additional time to obtain the necessary evidence. I further certify that diligent and prompt efforts will be undertaken to obtain this evidence.

Signature

Date

Check if adult signed for a child: _____

_____ 3. I am not contending eligible immigration status and I understand that I am not eligible for financial assistance.

If you checked this block, no further information is required, and the person named above is not eligible for assistance. Sign and date below and forward this format to the name and address specified in the attached notification. If this block is checked on behalf of a child, the adult who is responsible for the child should sign and date below.

Signature

Date

Check here if adult signed for a child: _____

Exhibit 3-6: **Sample Verification Consent Form**

INSTRUCTIONS: Complete this format for each noncitizen family member who declared eligible immigration status on the **Citizenship** Declaration format. If this format is being completed on behalf of a child, it must be signed by the adult responsible for the child.

CONSENT

I, _____ hereby consent to the following:
(print or type first name, middle initial, last name)

- 1, The use of the attached evidence to verify my eligible immigration status to enable me to receive financial assistance for housing; and
- 2, The release of such evidence of eligible immigration status by the project owner without responsibility for the further use or transmission of the evidence by the entity receiving it to the following:
 - a. HUD, as required by HUD; and
 - b. The DHS for purposes of verification of the immigration status of the individual.

NOTIFICATION TO FAMILY:

Evidence of eligible immigration status shall be released only to the DHS for purposes of establishing eligibility for financial assistance and not for any other purpose. HUD is not responsible for the further use or transmission of the evidence or other information by the DHS.

Signature

Date

Check here if adult signed for a child: _____

Exhibit 3-7: ****Sample**** Owner's Summary of Family

Member No.	Last Name of Family Member	First Name of Family Member	Relationship to Head of Household	Sex	Date of Birth	Declaration	Date Verified
Head							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							

Exhibit 3-8: **Sample Owner's Notice No. 2 for a Tenant Family**

Dear (insert name of head of household):

I regret to inform you that the primary and secondary verification reviews of immigration status performed by DHS failed to confirm eligibility for the following members of your family:

First and Last Name	Reason for termination of assistance
---------------------	--------------------------------------

Based on these reviews, your family is not eligible to continue receiving housing assistance and must begin paying market rent or vacate the unit unless you exercise one of the following options:

Option 1 – Appeal the results of secondary verification to DHS;

Option 2 – Request an informal hearing with my representative; or

Option 3 – Request a determination on your family's eligibility for (a) continued assistance, (b) prorated assistance, or (c) a temporary deferral of termination of assistance. These three types of assistance are explained in an attachment to this letter.

If you choose Option 1 and would like to appeal the results of secondary verification to the DHS, you must submit the following information to the DHS office located at (owner should insert address of local DHS office) no later than (insert date 30 days from date of this letter):

1. A copy of this letter (Notice No. 2);
2. A letter to DHS requesting the appeal;
3. Additional documentation of immigration status or a written explanation in support of the appeal;
4. A copy of the enclosed DHS Form G-845S that was used to request secondary verification, marked at the top center of the form in bold print "HUD APPEAL"; and
5. Two stamped envelopes, one addressed to you and one addressed to (owner should insert owner's name and address).

A copy of your request and proof of mailing, such as a receipt for certified or registered mail, must also be sent to (owner's name and address). If this appeal is denied by the DHS, you will still have the opportunity to proceed to Option 2 but must do so within 14 days of the date the DHS mailed its decision on the appeal (established by the postmark).

If you choose to bypass the DHS appeal process and proceed directly to option 2 and would like to schedule an informal hearing with my representative, contact (insert name and telephone number of contact) no later than (insert date 30 days from date of this letter) to schedule this meeting. If this hearing ends in a negative determination, you can proceed to Option 3.

If you proceed directly to Option 3 and bypass all other options, you should understand that you have not been determined eligible for one of these types of assistance but are requesting a determination of eligibility.

If you wish to choose Options 1, 2, or 3, please check the option of your choice on the attached option sheet and return it to (owner's name and address) no later than (insert date 30 days from date of this letter). Failure to do this will cause this office to believe that you are accepting the results of secondary verification, and you will either pay market rent or vacate the unit.

TYPES OF ASSISTANCE AND AVAILABILITY

Prorated assistance

What it is? The amount of assistance paid for a mixed family is reduced when not all family members have eligible status.

Availability. It is available to mixed applicant families and mixed tenant families who meet the conditions below:

1. The family is not receiving continued assistance; and
2. Termination of the family's assistance is not temporarily deferred.

Temporary deferral of termination of assistance

What it is? Deferral of the termination of assistance a tenant family is currently receiving to permit the family additional time to make an orderly transition to other affordable housing.

Deferral period. The initial period is for six months and may be renewed for additional periods of six months, but the aggregate deferral period shall not exceed a period of 18 months.

****NOTE:** If the family receiving assistance on June 19, 1995 includes a refugee under section 207 of the Immigration and Nationality Act, or an individual seeking asylum under section 208 of that Act, a deferral can be given to the family and there is no time limitation on the deferral period. The 18 month deferral limitation does not apply.**

Availability.

1. *The family was in residence on June 19, 1995; *
2. It is available to a mixed tenant family who qualifies for prorated assistance but decides not to accept prorated assistance;
3. A tenant family who has no members with eligible status and for whom the temporary deferral is necessary to permit the family additional time for the orderly transition of those family members with ineligible status, and any other family members involved, to other affordable housing.

Conditions. Temporary deferral shall be granted to the family if one of the following conditions is met:

1. The family demonstrates that reasonable efforts to find other affordable housing of appropriate size have been unsuccessful;
2. The vacancy rate for affordable housing of appropriate size is below 5% in the housing market area; or
3. The Consolidated Plan, if it applies to the program, indicates that the local jurisdiction's housing market lacks sufficient affordable housing opportunities for households having a size and income similar to the family seeking the deferral.

OPTION SHEET

_____ Option 1 – DHS Appeal

I/We hereby declare our intention to appeal the results of secondary verification of immigration status to the DHS. I/We understand that we must submit the following information to the DHS office:

1. A copy of this letter (Notice No. 2);
2. A letter requesting the appeal;
3. Additional documentation of immigration status or a written explanation in support of the appeal;
4. A copy of the enclosed DHS Form G-845S that was used by the owner to request Secondary Verification, marked at the top center of the form in bold print "HUD APPEAL"; and
5. Two stamped envelopes, one addressed to me and one addressed to the owner.

(Signature, head of household)

(Date)

_____ Option 2 – Informal Hearing with Owner

I/We hereby request an informal hearing with a representative of the owner.

(Signature, head of household)

(Date)

_____ Option 3 – Request for a Determination on Other Type of Assistance

I/We understand that our family may be eligible for another type of assistance, and I/we are interested in pursuing this option, rather than Options 1 and 2. Please consider this our request for a meeting to discuss the availability of another type of assistance for our family.

(Signature, head of household)

(Date)

Exhibit 3-9: **Sample Owner's Notice No. 2 for an Applicant Family**

Dear (insert name of head of household):

I regret to inform you that the primary and secondary verification reviews of immigration status performed by the DHS failed to confirm eligibility for financial assistance for the following members of your family:

First and Last Name	Reason for denial of assistance
---------------------	---------------------------------

NOTE: Also insert any other reasons they may be ineligible in accordance with Handbook 4350.3, paragraphs 3-12 and 4-31.

Based on these reviews, your family is not eligible to receive the housing assistance for which you applied. At this point, you can either accept this decision and have your application for housing assistance withdrawn from further consideration or exercise one of the following options:

Option 1 – Appeal the results of secondary verification to the DHS;

Option 2 – Request an informal hearing with my representative; or

Option 3 – Pursue your eligibility for prorated assistance.

If you choose Option 1 and would like to appeal the results of secondary verification to the DHS, you must submit the following information to the DHS office located at (owner should insert address of local DHS office) no later than (insert date 30 days from date of this letter):

1. A copy of this letter (Notice No. 2);
2. A letter to the DHS requesting the appeal;
3. Additional documentation of immigration status or a written explanation in support of the appeal;
4. A copy of the enclosed DHS Form G-845S that was used to request secondary verification, marked at the top center of the form in bold print "HUD APPEAL"; and
5. Two stamped envelopes, one addressed to you and one addressed to (owner should insert owner's name and address).

A copy of your request and proof of mailing, such as a receipt for certified or registered mail, must also be sent to (owner's name and address). If this appeal is denied by the DHS, you will still have the opportunity to proceed to Options 2 and 3, but must do so within 14 days of the date the DHS mailed its decision on the appeal, established by the postmark.

If assistance becomes available during the appeal process, and your family is otherwise eligible to receive the assistance, it will be provided. However, the assistance may be adjusted or terminated subsequent to the conclusion of the Section 214 review and appeal process.

If assistance becomes available after a negative conclusion by the DHS on your appeal and before the conclusion of the informal hearing process (Option 2), the assistance will be delayed until a final conclusion is reached.

If you choose to bypass the DHS appeal process and proceed directly to Option 2 and would like to schedule an informal hearing with my representative, contact (insert name and telephone number of contact) no later than (insert date 30 days from date of this letter) to schedule this meeting. Of course, if this hearing ends in a negative determination, you can proceed to Option 3.

If you proceed directly to Option 3 and bypass all other options, you should understand that you have not been determined eligible for prorated assistance but are requesting a determination of eligibility. Prorated assistance means that the amount of assistance your family receives would be reduced based on the number of ineligible family members in your family. In other words, the rent you pay may be less than market rent, but would not be reduced to the level it would be if your whole family could evidence eligible immigration status.

If you wish to choose Options 1, 2, or 3, please check the option of your choice on the attached option sheet and return it to (owner's name and address) no later than (insert date 30 days from date of this letter). Failure to do this will cause this office to believe that you are accepting the results of secondary verification, and your application for housing assistance will be removed from further consideration.

OPTION SHEET

_____ Option 1 – DHS Appeal

I/We hereby declare our intention to appeal the results of secondary verification of immigration status to the DHS. I/We understand that we must submit the following information to the DHS office:

4. A copy of this letter (Notice No. 2);
5. A letter requesting the appeal;
6. Additional documentation of immigration status or a written explanation in support of the appeal;
7. A copy of the enclosed DHS Form G-845S that was used by the owner to request secondary verification, marked at the top center of the form in bold print "HUD APPEAL"; and
8. Two stamped envelopes, one addressed to me and one addressed to the owner.

(Signature, head of household)

(Date)

_____ Option 2 – Informal Hearing with Owner

I/We hereby request an informal hearing with a representative of the owner.

(Signature, head of household)

(Date)

_____ Option 3 – Request for a Determination on Proration

I/We understand that our family may be eligible for prorated assistance, and I/we are interested in pursuing this option, rather than Options 1 and 2. Please consider this our request for a meeting to discuss the availability of proration for our family.

(Signature, head of household)

(Date)

Exhibit 3-10: **Sample Owner's Notice No. 3 for a Tenant Family Final Decision On Immigration Status**

Dear (insert name of head of household):

[USE THE FOLLOWING FOR AN ELIGIBLE TENANT FAMILY]

We have concluded the Section 214 review (and appeal) process and determined that your family is eligible to continue receiving the financial assistance that you currently receive.

If there are any changes to your family (either additions to or removal of any family member or changes in their immigration status), you must contact this office immediately to determine whether a further Section 214 review is necessary. As long as there are no changes to your family and you are continuously assisted, this review will not be repeated unless you move from your present unit to another project with assisted housing.

In the event that your family does move and/or change the type of housing assistance you receive, a new Section 214 review will be completed by the new project owner (or other responsible entity).

OR

[USE THE FOLLOWING FOR A MIXED TENANT FAMILY]

We have concluded the Section 214 review (and appeal) process and determined that your family meets the definition of "mixed family."

A "mixed family" means a family whose members include those with citizenship or eligible immigration status and those without citizenship or eligible immigration status. Mixed families can, under certain conditions, receive prorated assistance. That means that the amount of assistance paid for a mixed family is reduced based on the number of family members who have ineligible status rather than paid based on the total number of family members.

In your case, ___ out of ___ family members are ineligible; therefore, your assistance will be reduced by ___ %, unless the ineligible members move from the family or you request and receive one of the following other types of assistance:

Prorated Assistance

What it is? The amount of assistance paid for a mixed family is reduced based on the number of family members who have eligible status rather than paid based on the total number of family members.

Availability. It is available to mixed applicant families and mixed tenant families who meet the conditions below:

1. The family is not receiving continued assistance; and
2. Termination of the family's assistance is not temporarily deferred.

Temporary deferral of termination of assistance

What it is? Deferral of the termination of assistance a tenant family is currently receiving to permit the family additional time to make an orderly transition to other affordable housing.

Deferral period. The initial period is for six months and may be renewed for additional periods of six months, but the aggregate deferral period shall not exceed a period of *18 months.*

****NOTE:** If the family receiving assistance on June 19,1995 includes a refugee under section 207 of the Immigration and Nationality Act, or an individual seeking asylum under section 208 of that Act, a deferral can be given to the family and there is no time limitation on the deferral period. The 18 month deferral limitation does not apply.**

Availability.

1. *The family was in residence on June 19,1995; *
2. It is available to a mixed tenant family who qualifies for prorated assistance (and does not qualify for continued assistance), but decides not to accept prorated assistance;
3. A tenant family who has no members with eligible status and for whom the temporary deferral is necessary to permit the family additional time for the orderly transition of those family members with ineligible status, and any other family members involved, to other affordable housing.

Conditions. Temporary deferral shall be granted to the family if one of the following conditions is met:

1. The family demonstrates that reasonable efforts to find other affordable housing of appropriate size have been unsuccessful;
2. The vacancy rate for affordable housing of appropriate size is below 5% in the housing market area; or
3. The Consolidated Plan, if it applies to the program, indicates that the local jurisdiction's housing market lacks sufficient affordable housing opportunities for households having a size and income similar to the family seeking the deferral.

Please contact this office immediately to discuss the type of assistance you wish to pursue. At that time, these options will be discussed with you in detail. If you fail to contact this office within 30 days from the date of this letter, your financial assistance will automatically be reduced under the proration of assistance requirements.

Also, if there are any changes to your family (either additions to or removal of any family member or changes in their immigration status), you must contact this office immediately to

determine if a further Section 214 review is necessary. As long as there are no changes to your family, this review will not be repeated unless you move from your present unit to another assisted-housing situation.

In the event that your family does move and/or you change the type of housing assistance you receive, a new Section 214 review will be completed by the new project owner (or other responsible entity).

This decision does not preclude your family from exercising the right that may otherwise be available to seek redress directly through judicial procedures.

OR

[USE THE FOLLOWING FOR AN INELIGIBLE TENANT FAMILY]

I regret to inform you that we have concluded the Section 214 review (and appeal) process and were unable to confirm eligible immigration status for any of your family members. Therefore, your family is not eligible to continue receiving financial assistance except as noted below.

You may continue to occupy the unit by paying \$_____, which is the market rent for the unit, or you may choose to vacate the unit. Also, your family may be eligible for a temporary deferral of termination of assistance to permit your family additional time to make an orderly transition to other affordable housing.

These options will be discussed in detail with you if you contact this office within 30 days from the date of this letter. Failure to arrange this discussion within the 30 days will cause this office to begin termination of tenancy.

This decision does not preclude your family from exercising the right that may otherwise be available to seek redress directly through judicial procedures.

Exhibit 3-11: **Sample Owner's Notice No. 3 for an Applicant Family
Final Decision on Immigration Status**

Dear (insert name of head of household):

[USE THE FOLLOWING FOR AN ELIGIBLE APPLICANT FAMILY]

We have concluded the Section 214 review (and appeal) process and determined that your family is eligible to receive financial assistance.

This office will contact you as soon as assistance is available for your family.

OR

[USE THE FOLLOWING FOR A MIXED APPLICANT FAMILY]

We have concluded the Section 214 review (and appeal) process and determined that your family meets the definition of "mixed family" and is eligible to receive prorated financial assistance.

A "mixed family" means a family whose members include those with citizenship or eligible immigration status and those without citizenship or eligible immigration status. Mixed families can, under certain conditions, receive prorated assistance. That means that the amount of assistance paid for a mixed family is reduced based on the number of family members who have ineligible status rather than paid based on the total number of family members.

In your case, ____ out of ____ family members are ineligible; therefore, you would receive ____ % of the financial assistance your family would typically be entitled to if all members were eligible. In the event that the family composition changes prior to your receiving assistance, further adjustments may be made to this percentage.

When assistance becomes available for your family, this percentage will be finalized and used in calculating the rent you pay for your unit. This decision does not preclude your family from exercising the right that may otherwise be available to seek redress directly through judicial procedures.

This office will contact you as soon as assistance is available for your family.

OR

[USE THE FOLLOWING FOR AN INELIGIBLE APPLICANT FAMILY]

I regret to inform you that we have concluded the Section 214 review (and appeal) process and were unable to confirm eligible immigration status for any of your family members. Therefore, your family is not eligible to receive financial assistance. The application that you filed for housing assistance will be removed from further consideration.

This decision does not preclude your family from exercising the right that may otherwise be available to seek redress directly through judicial procedures.

If the immigration status of your family changes in the future and you are able to provide evidence that would confirm eligible status, we would be happy to accept a new application for housing assistance. Any new application will be subject to a complete review, including program and income eligibility determinations.

Exhibit 3-12: Section 8, RAP, and Rent Supplement Programs – Special Instructions for Determining Prorated Assistance Payment and Prorated Total Tenant Payment/Tenant Rent for Families Subject to Proration Procedures Regarding the Restriction on Assistance to Noncitizens

Special Instructions for Determining
Prorated Assistance Payment and
Prorated Total Tenant Payment/Tenant Rent

Tenants Paying a Rent Assisted Under
Section 8, Rental Assistance Payment (RAP), and
Rent Supplement

NOTE: If this tenant receives assistance under one of the programs listed above and this is a Section 236 Project, see * Exhibit 3-14.*

A. Calculate the Total Tenant Payment (TTP) and the resulting assistance payment without prorations.

1. _____ Enter the Gross Rent. Follow the instructions for Gross Rent of the **HUD-50059**.
2. _____ Determine the TTP. Follow the instructions for Total Tenant Payment of the **HUD-50059**.
3. _____ Subtract the TTP entered in line 2 from the Gross Rent entered in line 1. Enter the difference here. (This is the Assistance Payment the family would receive if they were not subject to the proration requirements. Follow the instructions in Assistance Payment Amount, in completing this item.)

B. Calculate the prorated assistance payment. Enter this amount as the Assistance Payment Amount.

4. _____ Enter the number of people in the family who are Eligible Persons, i.e., citizens or eligible noncitizens. See the Glossary for the definition of these terms.
5. _____ Enter the fraction that represents the number of Eligible Persons (numerator) and the number of persons in the family (denominator).
EXAMPLE: There are five persons in the family, of which three are eligible. The fraction for this family would be 3/5.
6. _____ Multiply the amount in line 3 (the Assistance Payment the family would pay if they were not subject to the proration procedures) by the fraction determined in line 5. Enter the product here and in the Assistance Payment field of the **HUD-50059**. This is the Prorated Housing Assistance Payment for this family.

C. Calculate the prorated TTP.

7. _____ Enter the Gross Rent from, Gross Rent (not Market Rent), the **HUD-50059**.
8. _____ Subtract the amount in line 6 (Prorated Housing Assistance Payment) from the amount in line 7 (Gross Rent). This is the Prorated TTP for this family. Transfer this amount to the Total Tenant Payment of the **HUD-50059**.

D. Calculate the prorated tenant rent and any utility reimbursement.

9. _____ Enter the Utility Allowance from Utility Allowance Amount of the **HUD-50059**.
10. _____ Subtract the Utility Allowance in line 9 from the Prorated TTP in line 8 and enter the amount here and in Tenant Rent of the **HUD-50059**. Follow the instructions in Tenant Rent. This is the Prorated Tenant Rent.

If you entered zero in line 10 (and in Tenant Rent of the **HUD-50059**), complete line 11.

11. _____ If the Utility Allowance in line 9 is greater than the Prorated TTP in line 8, enter the difference here and in Utility Reimbursement of the **HUD-50059**. Otherwise leave this line and Utility Reimbursement, blank.

Exhibit 3-13: Section 236 Without Additional Assistance – Special Instructions for Determining Prorated Assistance Payment and Prorated Total Tenant Payment/Tenant Rent for Families Subject to Proration Procedures Regarding the Restriction on Assistance to Noncitizens

Special Instructions for Determining
Prorated Assistance Payment and
Prorated Total Tenant Payment/Tenant Rent

Section 236 Tenants Who are Paying
Between Basic and Market Rent
(WITHOUT the benefit of additional assistance)

NOTE: If the tenant receives assistance under Section 8, Rent Supplement, or Rental Assistance Payment and this is a Section 236 project, use *Exhibit 3-14.*

A. Calculate the difference between market rent and tenant rent without prorations.

1. _____ Enter the Market Rent from Market Rent field of the **HUD-50059**.
2. _____ Determine the Tenant Rent in accordance with the instructions for Tenant Rent of the **HUD-50059**.
3. _____ Subtract line 2 (Tenant Rent), from line 1 (Market Rent) and enter the result here. This is the difference between the Market Rent and the Tenant Rent, before considering prorations.

B. Calculate the prorated difference between the market rent and the tenant rent.

4. _____ Enter the number of people in the family who are Ineligible Persons; i.e. persons who do not meet the definition of a citizen or eligible noncitizen. See the Glossary for the definition of these terms.
5. _____ Enter the fraction that represents the number of Ineligible Persons (numerator) and the number of persons in the family (denominator).
EXAMPLE: There are five persons in the family, of which two are ineligible. The fraction for this family would be 2/5.
6. _____ Multiply the amount in line 3, the difference between the Market Rent and the Tenant Rent before prorations, by the fraction determined in line 5. Enter this amount in Line 6. This represents the prorated difference between the Market Rent and the Tenant Rent.

C. Calculate the prorated tenant rent.

7. _____ Add the following amounts and enter the result in line 7: add line 2 (Tenant Rent before prorations) and line 6 (prorated difference between the Market Rent and the Tenant Rent). The result is the Prorated Tenant Rent. Enter the amount in line 7 in Tenant Rent of the **HUD-50059**.

Exhibit 3-14: Section 236 With Benefit of Additional Assistance – Special Instructions for Determining Prorated Assistance Payment and Prorated Total Tenant Payment/Tenant Rent for Families Subject to Proration Procedures Regarding the Restriction on Assistance to Noncitizens

Special Instructions for Determining
Prorated Assistance Payment and
Prorated Total Tenant Payment/Tenant Rent

Section 236 Tenants Who are Paying
Between Basic and Market Rent
(WITH the benefit of additional assistance)

- A. **Calculate the difference between market rent and the contract rent/basic rent for the unit (without prorations).**
1. _____ Enter the Market Rent from Market Rent of the **HUD-50059**.
 2. _____ Enter the Contract/Basic Rent from Contract Rent Amount of the **HUD-50059**.
 3. _____ Subtract line 2, Contract/Basic Rent, from line 1, Market Rent, and enter the difference here.
- B. **Calculate the prorated difference between the market rent and the contract/basic rent.**
4. _____ Enter the number of people in the family who are Ineligible Persons; i.e. persons who do not meet the definition of a citizen or eligible noncitizen. See the Glossary for the definition of these terms.
 5. _____ Enter the fraction that represents the number of Ineligible Persons (numerator) and the number of persons in the family (denominator).
EXAMPLE: There are five persons in the family, of which two are ineligible. The fraction for this family would be 2/5.
 6. _____ Calculate the prorated difference between the Market Rent and the Contract/Basic Rent. Multiply line 3 difference between the Contract/Basic Rent and the Market Rent by the fraction determined in line 5. Enter the amount in line 6.
- C. **Calculate the assistance adjustment for Rent Supplement, RAP, or Section 8 assistance the tenant would otherwise receive.**
7. _____ Enter the Gross Rent. Follow the instructions in Gross Rent (not Market Rent) of the **HUD-50059**.

8. _____ Determine the Total Tenant Payment (TTP). Follow the instructions in Total Tenant Payment of the **HUD-50059**. This is the TTP the family would pay without prorations.
9. _____ Subtract the TTP entered in * line 8 * from the Gross Rent entered in line 7. Enter the difference here. (This is the Assistance Payment for this family if they were not subject to the proration requirements. Follow the instructions in Assistance Payment Amount of the **HUD-50059** in completing this item.)
10. _____ Multiply the amount in line 9 (the Assistance Payment for this family if they were not subject to the proration procedures) by the fraction determined in line 5. Enter the product here. This is the Assistance Adjustment for this family.

D. Calculate the prorated TTP.

11. _____ Add the following amounts: line 6 + * line 8 * + line 10. Enter the sum in line 11. You are adding the following amounts: the prorated difference between the Market Rent, the TTP the family would pay without prorations, and the Assistance Adjustment the family would otherwise receive.

E. Calculate the prorated assistance payment.

12. _____ Enter the Gross Rent for this unit from Gross Rent (not Market Rent) of the **HUD-50059**.
13. _____ Subtract line 11 from line 12 (Gross Rent minus Prorated TTP). This is the Prorated Assistance Payment.

F. Calculate the prorated tenant rent and any utility reimbursement.

14. _____ Enter the Utility Allowance from Utility Allowance Amount of the **HUD-50059**.
15. _____ Subtract the Utility Allowance in line 14 from the Prorated TTP in line 11, and enter the amount here and in Tenant Rent of the **HUD-50059**. Follow the instructions in Tenant Rent. This is the Prorated Tenant Rent.

If you entered zero in line 15 (and in Tenant Rent of the **HUD-50059**), complete Item 16.

16. _____ If the Utility Allowance in line 14 is greater than the Prorated TTP in line 11, enter the difference here and in Utility Reimbursement of the **HUD-50059**. Otherwise leave this line and Utility Reimbursement, blank.